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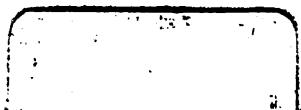
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CONTENTS

EDITORIALS:

- Coming Annual Conferences—Suggested Improvements in Criminal Procedure—State Criminologist in Illinois..... 2

CONTRIBUTED ARTICLES AND COMMITTEE REPORT:

1. The First English Court in (the present) Canada on its Criminal Side *William Renwick Riddell* 8
2. Statistics of Crime (Report of the American Prison Association) *William T. Cross* 16
3. A Historical Sketch of Military Law..... *Ridley McLean* 27
4. French and American Criminal Law: Three Points of Resemblance *Robert Ferrari* 33
5. A Trial for Witchcraft Six Hundred Years Ago..... *William Renwick Riddell* 40

CONTENTS Continued

6. A Psychiatric Contribution to the Study of Delinquency..	Herman M. Adler 45
7. Loan Sharks and Loan Shark Legislation in Illinois.....	Earle Edward Eubank 69
8. Physical States of Criminal Women..	Alberta S. B. Guilbord 82
JUDICIAL DECISIONS	96
NOTES AND ABSTRACTS:	

The Prevention and Repression of Alcoholism in Anglo-Saxon Countries (103)—A Suggestion Concerning the Truant Delinquent (105)—Fixes Blame for Dope Fiend Evil (107)—Laboratory Methods in Criminal Investigation (109)—Report of a Case of Kleptomania (110)—Should Alleged Confessions Made to Peace Officers After Arrest be Reduced to Writing Before Admission in Evidence? (111)—An Act Providing for the Establishment, Government and Maintenance of a Psychopathic Hospital Under the Management of the Board of Regents of the University of California, Regulating the Admission of Patients Thereto, Their Treatment Therein and Discharge Therefrom, and Making an Application Therefor (113)—The Military Occupation of Hostile Territory in the Light of Criminal Law (115)—A Humane Measure for the Protection and Care of Certain Children (117)—To Provide for the Sterilization of Inmates of Institutions Having the Care and Custody of Idiotic, Imbecile, Feeble-minded and Insane Persons, in Cases where such Sterilization will Materially Improve the Mental or Physical Condition of such Persons, and in Cases Where, Owing to the Idiocy, Imbecility, Insanity or Feeble-mindedness of such Persons, not Being in Permanent Custody, the Procreation by such Persons Would Produce Offspring Similarly Affected (126)—Juvenile Delinquency in Italy (128)—The Meaning of the Parole Law (129)—Conferences on Police Administration and Practice in Boston (130)—Chief Schuettler of the Chicago Police (133)—Wesley H. Westbrook, First Deputy Superintendent of Police of Chicago (134)—Forward Steps in the Missouri Penitentiary (135)—New York State Probation Commission (136)—Illinois Plans for State Commission (138)—The Philadelphia Municipal Court (138)—Smaller Number of Cases in Los Angeles (138)—Annual Meeting of the National Committee for Mental Hygiene (139)—Illiteracy and Crime (140)—National Conference of Charities and Correction (141)—Boston Saloons Out of Politics (141).

REVIEWS AND CRITICISMS:

A History of Continental Criminal Law, By *Carl Ludwig von Bar* (143)—Society and Prisons, By *Thomas Mott Osborne* (148)—A Study of Family Desertion, By *Earle Edward Eubank* (150)—Slavery of Prostitution—A Plea for Emancipation, By *Maude E. Miner* (152)—Proceedings of the Forty-Third Annual Meeting of the National Conference of Charities and Corrections, 1916 (153)—Mechanism of Character Formation: Introduction to Psychoanalysis, By *Dr. William A. White* (155)—Studies in Forensic Psychiatry, By *Bernard Glueck, M.D.* (156)—Justice for the Poor, By *the Committee on Criminal Courts of the Charity Organization Society of New York* (156).

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EDITORIALS

COMING ANNUAL CONFERENCES.

THE ANNUAL MEETING OF THE AMERICAN INSTITUTE OF CRIMINAL LAW AND CRIMINOLOGY, WILL BE HELD ON MONDAY AND TUESDAY, SEPTEMBER 3 AND 4, AT SARATOGA, N. Y.

Monday, September 3rd.

2 P. M. PRESIDENT'S ADDRESS, REPORTS OF COMMITTEES AND GENERAL BUSINESS.

8:30 P. M. ANNUAL ADDRESS AND REPORTS OF COMMITTEES.

Tuesday, September 4th.

2 P. M. ELECTION OF OFFICERS, REPORTS OF COMMITTEES AND GENERAL BUSINESS.

THE CONFERENCE OF THE SOCIETY OF MILITARY LAW WILL BE HELD AT THE SAME PLACE ON TUESDAY, SEPTEMBER 4, AT 3 P. M., WHEN REPORTS OF COMMITTEES AND PAPERS WILL BE PRESENTED AND GENERAL BUSINESS TRANSACTED.

THE ANNUAL CONFERENCE OF THE AMERICAN PRISON ASSOCIATION WILL BE HELD IN NEW ORLEANS EARLY IN OCTOBER.

THE ANNUAL MEETING OF THE NATIONAL CONFERENCE OF CHARITIES AND CORRECTION WILL BE HELD IN PITTSBURGH, JUNE 6-13. A FEATURE OF THIS MEETING WILL BE A CONFERENCE AMONG UNIVERSITY AND COLLEGE PROFESSORS TO DISCUSS PROBLEMS RELATING TO BRINGING STUDENTS IN THE CLASS-ROOM INTO CLOSER TOUCH WITH THE VITAL PROBLEMS OF CHARITIES AND CORRECTION.

SUGGESTED IMPROVEMENTS IN CRIMINAL PROCEDURE

At a meeting of the New York State Bar Association on January 12, 1917, a very interesting and suggestive address was delivered by Justice Harry Olson of the Municipal Court of Chicago under the title of "Efficiency in the Administration of Criminal Justice." Justice Olson offered suggestions for improvements in the organization of Courts, in procedure, in connection with the police and in the study of the individual criminal which he thinks would make for efficiency in the administration of the Criminal law and which are worthy of careful consideration.

With respect to courts Judge Olson referred in some detail to the reorganized municipal courts in many of our largest cities which have been established in recent years beginning with the Municipal Court

of Chicago, of which he is the presiding justice and to the success of which the personality of its presiding officer has contributed in no small degree. The more or less close imitations of the Chicago Municipal Court which have been adopted in a number of our most populous centers seem to indicate that a permanent improvement has been accomplished in the adaptation of Court organization to populous centers and the handling of large volumes of business. It does not, however, follow that the same form of organization would be an improvement outside of the large cities. Judge Olson quotes the model Court Act of the American Judicature Society. This scheme provides for, first, a court of appellate jurisdiction; second, a court of original jurisdiction, either state wide with a common law and a chancery division, or in five territorial divisions organized very much on the plan of the Chicago Municipal Court; third, a county court in each County for the trial of cases involving small amounts and which shall sit in several districts of the county, and, fourth, district county magistrates.

In the opinion of the present reviewer the attempt to construct a scheme which should be universally suitable has resulted in one that is not suitable anywhere. Certainly the scheme is more complex than existing forms in most of the states and than is necessary. One county court of original jurisdiction and an intermediate appellate court, if necessary to promptly dispose of appeals, would probably better suit many localities. In an article on court organization in the January number of the Illinois Law Review, Joseph J. Thompson said: "The ideal system under the present state of our population and advancement would seem to be a single court for each county (with a saving provision with respect to small counties that might be joined) with as many judges as shall from time to time become necessary and a sufficiently elastic system of designation or distribution of the business to secure the best results." In fact it is doubtful if there is any one best system. The form of organization of the Chicago Municipal Court was imitated in other large cities because the conditions in those cities were very similar to those in Chicago. In the country districts, however, in the various states there is a very wide variation in the size of counties and other political divisions and in their functions, in the geographical conditions, in the facilities of transportation and other means of communication and what not. A rigid system for all localities may very well not be desirable.

With respect to procedure Judge Olson declares for prosecution by information instead of by indictment. He would have a preliminary

examination before a law judge to take the place of the present preliminary examination by a magistrate and finding of indictment by the grand jury. An information may be easier to draw because the prosecuting attorney may draw as slipshod an information as he likes without the serious consequences of drawing a slipshod indictment. However, the result is quite likely to be that he will be ordered to file a bill of particulars and here again we have the element of delay. Proper pleadings, either civil or criminal, are not difficult if the attorney is only reasonably efficient and careful. To substitute a preliminary hearing before a law judge for the present preliminary hearing before a magistrate would be apt to accentuate rather than decrease delay. There are no complicated legal principles in such cases which require the intervention of a judge before the trial. On the other hand the grand jury being a body of laymen deals with the facts in a common-sense way and eliminates many cases which never should have been brought or in which there is not enough evidence to convict. Thus on the whole much time and expense is saved. As to the present preliminary hearing before a magistrate, it really takes the place of pleadings in criminal cases and in these days of prejudice against pleadings, when to require either party to a law suit to state clearly and unequivocally what is his contention is virtually taboo, serves a useful purpose.

Judge Olson calls attention to the need for greater efficiency in our police departments. The burden of preparing the case for the state is first upon the police. "If they knew what evidence to look for and how to preserve it, a great many cases otherwise lost by the state would be won." He suggests a continuous school in the police department teaching every phase of police work, such as finger prints, identification of mental defectives, methods of collecting evidence, etc. These suggestions are of the highest importance. There can be no question that the development of effort along these lines would yield large returns in the repression of crime.

Finally Judge Olson described the work of the psychopathic laboratory of the Chicago Municipal Court. The laboratory conducts mental examinations of defendants before the court although the defendant is not obliged to submit to the examination. The laboratory has been in operation in connection with the Municipal Court for about three years following the success of the Psychopathic Institute in connection with the Juvenile Court of Chicago, which was organized in 1909. It is manifest that this examination of individuals will result in the accumulation of material of great value for study. It is stated

that in something over 1000 cases of boys of the average age of 18 years passing through the court from 13 to 26 per cent in different groups arranged according to intelligence were found to be suffering from dementia praecox, the highest percentage being in the group of average intelligence. This percentage is astonishing, especially in view of Dr. Healy's finding, in the Juvenile Psychopathic Institute in the same city, not more than 25 cases of dementia praecox in 1000 cases or $2\frac{1}{2}$ per cent. This is adverted to as illustrating the fact that when we have collected our data we still have the question of interpretation which is even more important if we are to arrive at correct conclusions. By all means let us have our laboratories and collect all the data we can, but let us not be hasty in drawing conclusions until we are sure we fully understand all the factors involved.

EDWARD LINDSEY.

STATE CRIMINOLOGIST IN ILLINOIS

The State of Illinois, let it be here recorded, is the first state in the Union to create, by legislative enactment, the position of State Criminologist. Under the new Consolidation Act, which provides a Department of Public Welfare, to have charge of all correctional and charitable institutions of the state, the Criminologist is named as one of the officials.

It will apparently be the duty of this new official, who is granted a salary of \$5,000, to organize his department as a Bureau of the Department of Public Welfare; to call to his aid such assistants as he may need; to formulate a program of action; to promulgate the principles for which the new office shall stand; to secure public co-operation in his activities; and in general to blaze a trail in a field heretofore discussed but as yet uncharted and untraversed.

Singularly enough, a striking forecast of the Criminologist's work, or a goodly portion of it, is set forth in the Parole Law of Illinois, adopted nearly twenty years ago. After stating that when any prisoner is committed to serve his sentence, and a record is taken of his name, nativity, nationality, offense committed, etc., a further provision has heretofore remained obscure and unfulfilled. The text of the law adds that the records shall contain: "such other facts as can be ascertained of parentage, education, occupation and early social influences as seem to indicate the constitutional and acquired defects and tendencies of the prisoner, and based upon these, an

estimate of the present condition of the prisoner, and the best probable plan of treatment."

As a matter of fact, these provisions of the law have been a dead letter, or at least observed in a most perfunctory manner. Such information as has been secured, has been chiefly from the statements of the men themselves; not from any thorough or scientific investigation into the family and personal history of the prisoner.

Yet there is here contained an important part of the program of work for the State Criminologist. Indeed, here is perhaps the first, if not the most significant part of his undertaking, since an intelligent following out of these provisions of the law will necessarily lead him back into the more fundamental study of defendants in the courts, with the view to their better classification and treatment.

The success of this pioneer field depends entirely upon the man chosen to fill it; upon his ability to comprehend its immense possibilities, and to carry them into effect. That he should have both thorough training and practical experience in dealing with the crime problem goes without saying. He should have some aptitude for research, while not being primarily occupied in academic theorizing about the criminal. The position calls for familiarity with present processes of dealing with offenders from the human rather than the legal standpoint. He must have well defined standards derived from wide observation of the best methods applied in all states and all countries. He will need to exercise careful discrimination in judging policies and be able to put them to the test of scientific soundness. He must not be carried away by fads or yield to the suggestions of sentiment, or the adoption of superficial measures, usually exploded experiments of the past, in dealing with offenders.

At the same time this new Criminologist, it has been suggested, "should have some genius for originating and popularizing new measures—be the statesman of the new era in handling crime in Illinois."

The social and civic side of the crime problem will doubtless have a prominent place in this new department. The control of crime from the legal standpoint has already been overworked, besides the machinery of the courts and the Superintendent of Pardons and Paroles will meet all necessities in this regard. The social factors, both in the causes and cure of crime, on the other hand, have only fairly begun to be seriously considered.

To a Criminologist with a vision to see the important bearings of the social factors, there will be wide opportunity to secure the co-operation of many agencies heretofore unused or apathetic in deal-

ing with the offender. Many resources are at hand to the leader who shall discover and utilize them. The individual citizen, indifferent until now; social workers who have awaited direction in a comprehensive scheme of action; employers and industrial agencies, willing but uncertain as to whom and how to help the weak and wavering to the best advantage, all may find new hope and inspiration from this center of wise counsel.

Ultimately, the effectiveness of this department will doubtless rest upon the Criminologist's ability to secure the co-operation of the Judges. The preventive aspects of his service to the state will be in proportion to the response of the Judges and their willingness to see the extra-legal factors that enter into every case before them. The sentence they prescribe will be with an understanding of the physical, mental and moral limitations of the defendant, if they shall come to understand the modern conception of the individualization of treatment for the offender. The incumbent of the position should be given every facility for constructive work by public officials and the courts, and the cordial support of all interested citizens, to the end that Illinois' new enterprise in the field of penology may serve as a worthy example to be emulated by many other states.

F. EMORY LYON. •

ERRATUM

In the published report of the Institute Committee on Insanity and Criminal Responsibility we omitted to say that the bill relative to the criminal responsibility of the insane was approved by the last annual meeting of the Institute. Sections 1, 3 and 4 of the expert testimony bill were approved independently of the other two sections. The entire expert testimony bill had been approved at the previous annual meeting.

ROBERT H. GAULT.

THE FIRST ENGLISH COURT IN (THE PRESENT) CANADA ON ITS CRIMINAL SIDE.

WILLIAM RENWICK RIDDELL.¹

On an arm on the east coast of the Bay of Fundy, where the Annapolis River empties into the salt waters, stands Annapolis, a small town of about a thousand inhabitants. No one from its present appearance would think that for thirty years it was the capital of a territory larger than the British Isles; but so it was. Founded by the French in 1604 and called by them Port Royal, it was captured by the British in 1710, and finally ceded in 1713 by the Treaty of Utrecht. They named the town Annapolis Royal, after the Royal Anna then Queen,² and made it the capital of their new Province of Nova Scotia.³

Nicholson, the first British Governor, was succeeded in 1719 by Colonel Richard Phillips,⁴ who was instructed "to choose a council for the management of the civil affairs of the Province from the principal English inhabitants," and until an Assembly could be formed, to regulate himself by the instructions of the Governor of Virginia. In the following April he appointed Councillors, with one exception from the officers of the Garrison or Civil officers of the administration.

There were few English settlers in Nova Scotia. The French (Acadians) were troublesome and the Indians even more so. The

¹Justice of the Supreme Court of Ontario, Toronto.

²It was of Anne (when a Princess), her husband George of Denmark, her sister Queen Mary and her brother-in-law, King William III, that the wits wrote:

King William thinks all,
Queen Mary talks all,
Prince George drinks all
And Princess Anne eats all.

But Queen Mary did not talk her husband to death; he survived her; and poor George's drinking did not prevent him from making Anne a good husband and becoming by her the father of seventeen children, the longest lived of whom reached the age of twelve years only. Poor Queen Anne! Of all the many who have laughed at her pettiness and silliness, how few have thought of the mother's broken heart. Probably Queen Anne is best remembered from Pope's lines:

"Here, thou Great Anna, whom three realms obey,
Dost sometimes counsel take and sometimes tea."

³"Nova Scotia" included also what is now called New Brunswick, till 1784, when the Province of New Brunswick was divided off. At this time, however, there were no English settlers.

⁴Richard Phillips (or Philips) was born in England in 1661 and entered the army at an early age. He served under William of Orange in the Irish campaign of 1690 and was present at the famous Battle of the Boyne. Afterwards he served in New England. Returning to England he received his commission as Captain-General or Governor of Nova Scotia. He went home in 1722, returning in 1729, and again went to England permanently in 1730; resigning his office in 1749, he died in 1751.

English did not hesitate to charge the French not only with inciting the Indians, which was probably true, but also with teaching them that it was the English who crucified the Saviour—which lacks probability.⁵

“It was a time of peaceful expansion of the British Empire, and the policy of Walpole affected even this remote corner of it. To the careful student, . . . the transactions of a handful of army officers entrusted with the civil administration of a British Province, with an increasing hostile population, alien in speech and race and religion, must always have interest . . . they were careful to do justice and preserve order as far as lay within their power.”⁶

The Council began to sit April 20th, 1720, at His Excellency Colonel Phillips' House. April 19th, 1721, the Governor informed them that he had called them together “to consider of establishing a Court of Judicature to be held for the Province.” He informed them that one Article of his Instructions was to make the laws of Virginia a rule or pattern for this Government where they could be applicable, and that by the laws of Virginia the Governor and Council were the Supreme Court of Judicature. The Council promptly voted that it would be for his Majesty's service as well as very much for the satisfaction of the Inhabitants of the Province that such a Court should be held at Annapolis Royal by the Governor and Council as often as it should be thought necessary; and directed the Clerk to draw up a formal order. On the following day an order was passed, which, after reciting the “dayly cry here . . . for Justice by many of the Inhabitants and residents of this Province by Memorials, Petition and Complaints to His Excellency the Governor who . . . loaded with more than the common weight of Government has not time and leisure to consider fully of the same without the assistance of Council,” went on to provide that “His Excellency the Governor and Members of his Majesty's Council for this Province hold and keep a Court of Judicature for said Province annually . . . at Annapolis Royal upon the first Tuesday in May, August, November and February yearly and in

⁵See Haliburton's *Hist. of Nova Scotia*, Halifax, 1829, Vol. 1, p. 101 note.

⁶This quotation is from the preface (by Dr. MacMechan, Archivist of Nova Scotia) to Vol. II of the “Nova Scotia Archives,” from the third volume of which most of the material for this paper is taken. It has always seemed to me that a somewhat close parallel could be drawn between the government by the English of Acadia and the government by the Americans of the Philippine Islands. Perhaps someone better qualified than I will some day draw the parallel—and perhaps the dire misfortunes of the Acadians will not seem so much a reproach to British rule when the parallel is fully worked out.

every year from time to time"—the Governor to make a Proclamation of time and place of sitting as soon as might be.⁷

This was the first English Court of Judicature erected in the territory which is now the Dominion of Canada with nine Provinces and one Territory, each with its Supreme Court (and generally with that name) and its staff of Judges.

After this, the Council sat both as Council and as a Court of Judicature; and there is some difficulty in distinguishing the respective functions. Many civil cases were disposed of, as to title to land, validity of a will, fences, debt, bills of exchange, etc., etc.; but these I do not extract for this article.

There was infinite difficulty with the French and especially the priests; two of the latter on one occasion, when called before the Council, displayed great "Insolence, Called for chairs to sitt Down, saying that they did not Appear as Criminals and that they had no business with things Temporal and further expressed themselves in these words 'Que Nous N'avons point D'ordres à Recevoir jci.'"

With the Indians there was constant trouble; they murdered and ravaged on every opportunity; and at least once the Council had to threaten "to make Reprisalls by the Death of one of the Salvage prisoners in Custody to Deter them from any farther Outrage when they will Ly Under the fear of Loosing Nine more Still left in our possession." But I do not go into these matters; I confine my attention here to the criminal and quasi-criminal cases.

The first criminal case (apparently) to come before the Court was in September 1723, when Prudane Robichau, Sr., came up for trial on a charge of supplying the hostile Indians contrary to the Governor's Proclamation.

It was proved that Robichau had one evening when the sun was about half an hour high gone "Cross a Rod . . . with a Bagg and a Bottle under his arm towards the place where . . . the Enemy Indians were," and that "Some Indians were Discovered with provisions and a Bottle before them which by His Smell" the witness "took to be Rum and that . . . Robichau was Sitting by them." Another witness thought what was in bottle was rum, but did not

⁷The King's Privy Council at the Common Law exercised "a kind of extraordinary and corrective jurisdiction to prevent violence, corruption or intimidation"—but much jealousy was manifested from time to time at the exercise of this extraordinary jurisdiction. At length an Act was passed, 1487, 3 Henry VII, C. 1, giving a formal status to this Court of Star Chamber. I have in an Address before the Missouri Bar Association, September 1909, given some account of the criminal jurisdiction of the Privy Council. See also "Select Cases in the Star Chamber," Vols. I, II—Selden Society's Publication. Vol. XVI and XXV.

taste it. Robichau stoutly swore that he had no bottle, and that "what he was carrying in the Bagg was only a Hatt, a Shirt and a pair of Stockins" which belonged to a friendly Indian.

"The Honourable Lt. Governour and Council not finding full proof of the Accusation Reprimanded the said Prudane Robichau adviseing him to beware of giving any Such Suspensions of holding Correspondence with any of the Enemy Indians for the future and so Dismissed him."

Other and more pretentious Courts have been equally illogical in rebuking or warning a man found not guilty,⁸ and one can hardly avoid the suspicion that Prudane knew more than he told of the "Enemy Indians." (His name was, of course, "Prudent"; but French orthography never was the strong point with Englishmen, home or colonial.)

Even "curing Enemy Indians" who had been wounded, was an offence; and a Surgeon "one Monsr. Mutton," charged with this offence, had to give good security to the Government for his good behaviour.

Some of the troubles of the Court in getting the accused to appear are given in detail. In August, 1724, Lewis Tibeau (I presume, "Thibault") complained of Joseph Brusar (no doubt, "Broussard") for maltreating him. The Governor sent an order to Brusar to appear to answer this complaint. Tibeau endeavouring to serve Brusar with the order, Brusar beat him and tore the order to pieces. The Governor again summoned Brusar to appear. He did not come. Again sent for, he was brought in by his friends, and after examination "put Prisoner upon Guard." Subsequently confessing his fault and promising amendment, he was released with a reprimand.

Robert Nicholes was not so fortunate. He was servant to Lawrence Armstrong, Lieutenant Governor of Nova Scotia during the absence of Phillips; and one day he struck his master. The Council determined to make "An Example of" him and punish him severely "for his Audacious Violence Offered to the Honourable Lt. Gov. of the Province in order to terrifie all Such bold harden'd Villains from Assaulting the Gov. Who Represents his Majesty": and accordingly the following sentence, was pronounced:

"The Punishmt. therefore Inflicted on thee is to Sitt upon a

⁸I myself heard the late Chief Justice of Ontario, the Honourable John Douglas Armour, at the Ottawa Assizes, when an accused was acquitted of a charge of stealing a fur cap, say "Prisoner, the Jury have acquitted you; go home, and take care that you steal no more caps."

The verdict "Not Guilty, but don't do it again," has become a proverb.

Gallowes three Days, half an hour each Day, with a Rope about thy Neck and a paper upon your Breast Whereon shall be Writt in Capitall Letters AUDACIOUS VILLAIN And afterwards thou art to be Whipt at a Carts tail from the Prison up to the Uppermost house of the Cape and from thence back again to the Prison house Receiving Each hundred paces five Stripes Upon your bare Back with a Catt of Nine tails and then thou art to be turn'd over for a Soldier."

The pillory⁹ was a punishment awarded for other crimes than striking one's Master. For example: at the April Sittings, 1731, His Excellency Governor Phillips acquainted the Council of a "Notorious Fraud that had been committed by two Inhabitants," and "it being prov'd upon them" they were "sentenc'd as Follows:" "Viz^t.—Agreed and Orderd y^t. Augustine Como & Francis Richards being found Guilty of y^e. Crime alledg'd against them by His Excellcy y^e. sd Como shall make good his Bargain & stand in y^e Pilory in y^e. most publick place in y^e. Town on y^e. Next Holy day, dureing one Hour being from Eleven till twelve of y^e Clock. A. M. & Francis Richards to stand half y^e. sd time in y^e Pilory as afores^d. that both Como and Richards shall continue in Confinement untill y^e. sd Sentence shall be fulfill'd & Charges paid."

Whipping was another punishment equally common and probably more effective.

In January 1733 two men "ffrancis¹⁰ Raymond and ffrancis Meuse" were found guilty of crimes—the former of repeated thefts and, with the latter, of chopping down trees on the road. "Whereupon it was agreed (after Some Questions put and Considered) That ffrancis Raymond Should be Whipt at the Carts tail vizt at the Block House, at the ffort Gate, at the Cape and at Mr. Gautiers; and at Each of these places to Recieve five Stripes on his Bare Back with a Cat of Nine Tails; And that ffrancis Meuse Should Receive 40 Stripes at the ffort Gate on his Bare Back with a Cat of Nine Tails; but submitted the inflicting or Remitting the same to his Honours Clemency; and ordered

⁹The Pillory was abolished in England in 1837, by the statute of 1 Vict. C. 23. In Upper Canada it survived till 1841, when it was abolished by the statute 4 and 5 Vict. C. 31. There are many instances in our records of this punishment being imposed. One very celebrated case is mentioned in my article "Early Legislation and Legislators in Upper Canada," Canadian Law Times for March, 1913, (33 Can. L. T. at p. 190.)

¹⁰Of course the double "ff" was the old way of writing a capital F. This is still affected by some of the name of French, etc.

The "Pistol" to be paid the constable for his prison fee was not a "pistol" according to our present orthography, but a "pistolet." This, a very common denomination of money at the time and for more than half a century later, was 18/6 Halifax Currency, or \$3.70 of our present money (probably equivalent in purchasing value to about \$10 at the present time).

that Francis Raymond Remain in Prison after punishment till he pay the Constable a Pistol for his prison fees; and that Francis Meuse be also Committed till he pay to the Constable a Pistol for his prison fees, and be Bound over in a hundred pound, and also to find two Good Securitys in fifty Pound each for his Good behaviour for a year and a Day; And that both the Said Francis Raymond and Francis Meuse Should Cause the trees Cut down upon the Road to be Removed from off the Same, and brought hither and laid down by the ffort, in Such a place as Shall be appointed; and that they Stand Committed till this Sentence be performed."

A like hard fate overtook Peter Guon or Goun for stealing from Stephen Jones. Peter was a Spaniard in the service of John Stickney of Falmouth in New England, and after a constable had searched "for Stollen Goods" was convicted on his own confession. Whereupon it was agreed: "That Peter Guon the spaniard should Receive fifty Stripes at the Carts tail upon his bare Back, from the Mass house to the Cape; And be also bound for the Space and term of three Years to serve him the said Stephen Jones or Assignes towards Recompensing his Other Losses, Costs and Dammages Sustained through the Thefts of him the said Peter Goun to Commence from the Expiration of the time that the said Peter Goun hath Engaged to Serve John Stickney Marriner of ffalmouth in Casco Bay in New England, Provided he the said John Stickney Will not Redeem him the Said Peter Goun by paying unto him the Said Stephen Jones the proportion of Dammages Amounting to fifty-six pounds New England money."

I have not met elsewhere the sentence to serve the person from whom the property was stolen until it is paid for by labour; but that practice is an admirable one and might be adopted were it not for the objection in the present age to receive a thief into service.

In August 1734 a complaint was laid by Mary Davis against Jean Picot wife of Lewis Thebauld "for Scandalously Reporting and Accusing her of the Murder of Two Children." Witnesses were examined, and "it was found a vile Malicious Groundless and Scandalous Report and therefore Agreed That Jean Picot the Wife of Said Thebauld Should be Duck'd and that She and Cecil Thompson called by her the Said Picot as a Witness Should be both bound Over to the Peace as the Authors and Spreaders of Said Malicious Scandle and then Ordered that Jean Picot Should be Duck'd on Saturday Next the 10th Instant at High Water."

This seemed a severe punishment; ducking¹¹ frightened even the prosecutrix and she asked for mercy for her traducer.

"Then at the Request of the Said Mary Davis praying that the Aforesaid Sentence of Ducking may be Reversed And yt She the Said Picot might only be Obliged to ask her pardon on Sunday the 11th. Instant at the Mass house Door Which being Consider'd it was Agreed and accordingly Order'd that She the Said Jean Picot Should publicly beg her the Said Mary Davis's pardon at ye Mass house Door on Sunday the 11th. Instant."

The above are the cases coming before the Council on the criminal side from its organization till August 1736. The civil cases are rather more numerous.

While this the first English Court in our territory did not proceed

¹¹Blackstone (Comm. Vol. IV, p. 168) says: "A common scold *communis rixatrix* (for our law-Latin confines it to the feminine gender) is a public nuisance to her neighborhood, for which offense she may be indicted and if convicted shall be sentenced to be placed in a certain engine of correction called the trebucket, castigatory or *cucking-stool*, which in the Saxon language is said to signify the scolding-stool, though now it is frequently corrupted into *ducking-stool*, because the residue of the judgment is that when she is so placed therein she shall be plunged in the water for her punishment."

Murray, with that iconoclastic spirit so common in the modern lexicographer, does not accept Blackstone's derivation, but suggests that the original form was "cuck-stool"—"cuck" being *cacare* (hence it is called in the Chester Domesday "cathedra stercoris"). Alas, old times are changed, old manners gone—and the common scold, the disorderly woman, the dishonest tradesman, need no longer fear the cuckstool.

I do not find that it ever was in use in Upper Canada; perhaps it was not needed. Those interested will find a full account of the history of this form of punishment in Dr. T. N. Bushfield's "Obsolete Punishments." See also the Statute 3 Henry VIII, C. 6, S. 1.

A case in Massachusetts may be mentioned: Eliphalet Bradford Terry, Secretary of the Mayflower descendants of the State of New York, writing in the New York Times, Sunday, November 12th, 1916, and defending the Plymouth Colonists from the charge of witch-hunting, says:

"It is but right, however, to correct the statement that was made by one of them in regard to religious persecutions and trials of witches in Plymouth Colony. There is no record of any persecution for religious reasons in Plymouth Colony.

"Of cases arising from witchcraft there were but two in Plymouth Colony.

"The first case arose in 1661. Dinah, wife of Joseph Sylvester of Scituate, claimed to have seen her neighbor, the wife of William Holmes, in conversation with the devil, who was in the form of a bear.

"The sensible Holmes brought a suit for slander, which was tried by the General Court, Governor Prentice presiding. Dame Sylvester described their interview. In most Christian countries Mrs. Holmes's life would not have been worth a day's purchase, but Plymouth showed a degree of common sense altogether novel in such cases.

"Dame Sylvester was declared guilty of slander, and was ordered to be publicly whipped, or to pay Mr. Holmes £5; or that she openly confess her slander and repay Holmes's costs and charges. That she chose to do the latter is no more remarkable than that the result discouraged witch-searching for many years."

The second case resulted in an acquittal.

on strictly legal lines, it seems to have done substantial justice, employing a jurisprudence suited to the place and times.

Perhaps the fact will not be too much pressed against them that some of the Council in November, 1734, "presented his Honour with a memoriall in behalf of themselves & others . . . to be Sharers in some Mines discovered in the Province, as a Recompence of their many years Service at this Board," for among the Patentees for Mines in the Province there were in addition to the Councillors, His Excellency Governor Phillips and Lt. Governors Armstrong and Cosby, also men of such high rank as Sir Robert Walpole, the Duke of Newcastle, the Duke of Chandos, Lord Harrington, Horatio Walpole, Henry Pelham, &c., &c. It was the age of colossal and unblushing graft.

STATISTICS OF CRIME¹

REPORT OF THE COMMITTEE OF THE AMERICAN PRISON ASSOCIATION.

WILLIAM T. CROSS,² *Chairman.*

This is a statement in simple terms concerning public organization to secure criminal statistics. The report itself is not statistical. The problem before your committee is elementary. There is no need to use technical terms or to indulge in elaborate argument.³

The lack of a rational, comprehensive system of criminal statistics in the United States is one of the worst evidences to condemn us in the eyes of the scientific world. It is at the same time probably the most pervading fault in our public organization to combat crime. Upon this American Prison Association, more than upon any other body, rests the responsibility for improving this unsatisfactory situation.

In this report we shall state the relation of good statistics to success in the treatment of crime and to the objects of the Prison Association. We shall review your treatment of the subject in the past. The present plan of statistical organization in the United States will be described briefly and criticised, and the plans of foreign countries will be cited. It will be shown wherein our present arrangements are a positive obstacle to well-intentioned efforts to improve the crime situation in any community. On this basis we shall outline the essentials of a good plan of organization, and shall propose to you that the Prison Association this year take certain definite steps to improve conditions.

The best brief for the existence of this Committee on Statistics of Crime is to be found in the statement of the purposes of the Prison Association itself. These were named at last year's meeting as follows:

The American Prison Association was organized, and is maintained, for certain purposes, as follows:

1st. For the improvement of the laws which deal with offenses and offenders, and of the procedure of their enforcement.

2nd. To study the causes of crime and of the social surroundings of offenders, and the best methods of dealing with the latter, and of preventing the former.

¹Read at the Annual Congress of the American Prison Association, Buffalo, October, 1916.

²General Secretary of the National Conference of Charities and Correction.

³In simplifying the presentation, however, it has been necessary to leave many assertions without that support which a purely scientific paper would require.

3rd. The improvement of institutions wherein offenders are found.

4th. The after-care of prisoners, and especially such as give evidence of reformation.

"For the improvement of laws."—Since the beginning of the science of statistics in Germany, a hundred and fifty years ago, it has come to be universally recognized that in a complex, modern State no means other than statistical evidence will suffice as a reliable basis for the development of public policy.

"To study causes, surroundings, and methods."—Just as soon as the number of individuals handled by any court, institution, or other agency, exceeds a few score, it becomes impossible for any superintendent or warden to carry in mind the wide series of facts about each one which are significant in the matter of successful treatment. Carefully compiled statistics are as imperative in a scientific study of the treatment of crime as a letter file is for orderly correspondence.

"The improvement of institutions."—The chief significance of an institution lies in the fact that it is of greater social concern than the whims or arbitrary acts of any individual, or even the ideals of any one generation. Its intelligent operation must be established beyond the shadow of doubt upon irrefutable objective facts which any party in power or any generation may understand.

"The after-care of prisoners."—This is one of the specific divisions of a good system of treatment of crime. There is no other part in the process of treatment so opaque and discouraging for lack of reliable statistics as that of the after-careers of inmates of our penal institutions.

The American Prison Association is one of the oldest extant organizations for the discussion of practical social reform. Year after year it has been meeting to thresh over complex questions of human welfare and even of eternal destiny. Heated issues have gone unsettled for lack of comparable facts. Some of the most important problems have been avoided because exact and extensive statistics were not to be had. For these many years the course of improvement in administrative methods has been obstructed by the one big boulder of meager and well-nigh useless statistics.

So much has been said by authorities on this subject in comparison with what has been done that little room is left for useful investigation. In 1885 there was appointed a committee under the chairmanship of the late Dr. Fred H. Wines to advocate before Congress better organization for securing criminal statistics. Except for

this action, the earlier meetings of the Association are almost devoid of effort to bring about reform. In 1903 the matter was brought to your attention again forcibly under the leadership of Mr. Eugene Smith, President of the New York Prison Association. For a time there was a deluding prospect of effective reorganization under the leadership of the federal census office. Since 1904 you have had continuous discussion of the problem. A parallel effort has been made, apparently with greater vigor but with as little show of success, in the recently organized American Institute of Criminal Law and Criminology.

Nothing is more evident from these discussions of former years than that words are becoming of little avail and that the time for constructive action has arrived.

What have we to build upon?

One naturally would like to turn to a single source to find facts of every description about the crime situation in the United States. That source would be the government at Washington. But the federal government is a first-hand source only to the extent to which it actually conducts the system of apprehension, trial, and subsequent treatment of offenders. Courts are organized by the United States in certain restricted jurisdictions. Persons suspected of crime may be apprehended by federal officers. They may be confined in local jails, for the most part under municipal, county, or state control. The government conducts penitentiaries and reform schools, and to a certain extent the institutions operated by the States are utilized. There is also a system of federal parole. The government likewise operates the institutions and other agencies of the District of Columbia. The federal institutions publish individual reports similar in type to those of our state institutions. The remainder of the statistics of the federal government, so far as they are gathered through direct administrative channels, are comprehended in brief reports of the attorney-general.

Federal statistics of crime we most commonly understand to mean the publications of the Bureau of the Census, whose reports more recently relate to the populations of prisons only, and are limited to a few common facts. These reports are so familiar to you and so easily accessible that they need not be described. For prisoners in institutions at the time of the decennial enumeration eight questions were asked. For this purpose and for an account of those committed to or leaving the institutions by discharge or death during the year 1910 local prison officials were deputized as census agents. They

were required to fill out and return for each prisoner a schedule of nineteen questions in case of commitments and ten questions in case of discharge or death. This represents the modern development of a situation in regard to the census that has been improving slowly since it was inaugurated in 1880.

There are many obstacles to satisfactory census results in this field, and still progress has been made. The series of facts now available are of considerable usefulness and a fair degree of reliability. From an administrative standpoint they are important in determining the volume of business of the various institutions and in making comparisons according to certain simple standards. In the same rough way they give us an idea of the extent to which the prevailing methods of institution treatment are in use. As a measure of the amount of crime in relation to the general population these statistics lend aid, though some authorities seem to regard them as being scarcely more than a tantalizing mirage. For the more refined objects of criminal statistics the census results are of small value. It is to be questioned whether they are ever used as a basis of specific legislative reforms.

These census statistics consist exclusively of institutional statistics of crime. Only twice, during the administration of Dr. Wines, and later, in 1906, at the time of securing the resolution to gather judicial statistics, has the census attempted to gather and tabulate the more important facts recorded by the courts.

The penal statistics of most countries are secured through the ordinary channels of administrative control. It is, therefore, natural for us to inquire what our institutions and other agencies themselves may be doing directly or through the state boards and bureaus under which their government may be centralized. Mr. John Koren, in a report in 1910 to the American Institute of Criminal Law and Criminology, and Professor Louis N. Robinson, in a separate treatise on the *History and Organization of Criminal Statistics in the United States*, have given us excellent summaries of the meager and diverse plans of organization of the various States. Judicial criminal statistics are gathered with varying degrees of regularity and completeness by twenty-five States. Criminal statistics, as obtainable from institutions, are gathered for the most part by state boards of charities and correction or similar bodies in twenty-three States. Massachusetts, where the system is organized under the Bureau of Prisons, offers one of the best examples. Statistics of both the courts and the institutions suffer for lack of comparability as between States, and as between

judicial and prison statistics within a State. The fact that the public, and even the members of this Association who have special interest in these matters, have little knowledge of such statistics from their own States is evidence of the limited usefulness of the results obtained. The statistics for the most part are gathered in a crude fashion, and published, if at all, with little scientific analysis. The primary faults of the judicial statistics are their lack of scientific, standardized classification and definition of crimes, and of facts descriptive of the social condition of the criminal and the circumstances of the crime. The chief faults of the institution statistics are their meagerness, lack of uniformity and unreliability and the limited use made of them by the central authority.

There is special reason for the Prison Association to be interested in the institutional statistics of crime. From the beginning, this body has consisted chiefly of prison officials. Judicial statistics are at the present time under effective discussion in our sister organization, the American Institute of Criminal Law and Criminology. More ample observations on the subject of institution statistics would, therefore, seem to be appropriate.

Our penal institutions are naturally classified as local and state. The state prisons and reformatories are better represented than the smaller local institutions in the Prison Association. Moreover, their facilities for recording statistics are far superior, although local officials have access to a wider range of facts. All the state institutions publish reports, usually lengthy. There seems to be no statistical agreement among the publications of any State or among similar institutions, such as penitentiaries, in the different States. There has been little attempt to make the statistics of any institution of maximum usefulness in solving the crime problem.

The biennial report of a certain penitentiary, one of the largest in the country, may be used as an example. At the beginning there are brief tables in the running report of the warden, showing the movement of population and *per capita* cost and earnings. Then follow exhibits: where the convicts work, the amount received from each contractor, the population in a comparative table for ten years, the sex, color and age of convicts received, two elementary facts about their education combined in a table showing their conjugal condition, religious affiliations, States from which commitments were made and counties within the State, length of sentences, former occupations, offenses, disposition made of those discharged, and a balance sheet of the prison. This much occupies twenty-seven pages. Then to page

133 are itemized the earnings and disbursements of the penitentiary. A few pages are devoted to the administration of the hospital. Then nearly one hundred pages are given to a list of the prisoners received and discharged, with several facts about each. The final forty pages contain an inventory of the institution property. The whole array reads like a catalogue of ships. It would grade about 10 per cent from the standpoint of good publicity, and perhaps 50 per cent as criminal statistics. The kinds of facts recorded represent chiefly an accumulation from succeeding administrations, with scarcely any conscious purpose in the plan. The members of this Association know too well the devious histories of such publications and of the records on which they are based for criticism to be needed. Wardens and superintendents are preoccupied with other affairs. Improvements could be made so easily, and if suggested by competent authority would be so readily accepted, that effort should be devoted entirely to constructive plans rather than adverse criticism.

Respecting the local jails, lockups and police stations, the path of reform may be as clear, but it is surely longer. The administrative officers almost universally are not qualified to compile statistics and have great repugnance for such matters. On the side of classes of facts gathered, they seem to have no inclination to obtain the important statistics of environmental conditions they are so well situated to get. On the side of administration, they have no idea of the compilation of facts bearing on the success of their institutions in the treatment of crime. The average jail record is a study in brevity and in hieroglyphics. It is sure to contain as little as the law requires. Lockups usually have no records. Only with the greatest patience and the most protean efforts can even a minimum of useful statistics be obtained through ordinary administrative channels. Yet with scant encouragement from any national group, promising headway is being made by some of the state boards, as the speakers who are to follow will demonstrate.

Summarizing: The only federal statistics gathered directly and constantly are to be found in the reports of the several institutions and in the report of the attorney-general. For the country as a whole we have the periodical census. So far it has been irregular in plan, limited in extent, and liable to error at the local sources, especially in the case of the smaller institutions. Census statistics relate exclusively to institutions. The state governments are the most natural administrative sources for criminal statistics. About half of them have plans for gathering statistics, either judicial or institutional, or both. But

their forms and procedure are not standardized, and their results are given little analysis or effective presentation. For the most part they are simply innocuous.

Our scientific relations internationally are becoming constantly more profitable—in no realm more than that of the administration of justice and the treatment of persons convicted of crime. Yet our criminal statistics are the despair of the foreigner. The attitude of the penologists of European countries toward us must be about like that we have toward those dependent upon the sign language. Perhaps no European nation furnishes us an acceptable model of organization of criminal statistics, but at least their statistics are so planned as to lend good support to progressive administration and to facilitate scientific research.

The foreign statistics of crime usually quoted are those of the courts. It would be more appropriate to refer here to their institutional statistics. We have before us the 1914 report of the English Prison Commission. Beginning with an account of the prisoners under sentence during the year, it proceeds to a comparison with years preceding and a study of the relation of the amount of crime to the general population. Not only are the number of crimes accounted for, but the analysis reaches down to the number of individuals committing those crimes. With a warning against hasty conclusions from these statistics, it is demonstrated that the number of prisoners received for indictable offenses is decreasing. Again, it is shown that the tendency of discharged prisoners to return to lives of crime is diminishing. Elsewhere we find statistics of the crimes of juvenile-adult prisoners and of the after-careers of boys discharged from reformatories. The history of prison punishments for fifteen years is shown, and the death rates for twenty-five years. Thus the English report proceeds. Seeing it, one would say it is as unintelligent to try to operate our penal system without such correlated facts as it would be to try to run a mercantile business without a cash book. There are to be observed as noteworthy features of the English publication the integral relation between statistics, administration and even legislation; their standardized outlines and terms facilitating easy reference to other branches of the treatment of crime; and their frequent reference to those other branches so far as they relate to successful prison administration. The establishment of the Borstal system, the promulgation of the treatment of inebriates act, the creation of the preventive detention camps for recidivists—indeed, every important step in the improve-

ment of the English crime situation—appears to be based on comprehensive statistics.

The importance of good statistics is thrown in relief when one tries to get at the crime problem of any community. The few shaky facts one may assemble hang like a tantalizing veil between him and the real conditions. Witness this sentence from the report of the Merriam Crime Committee in Chicago:

“* * * There has never been in Chicago any attempt at an annual ‘stock-taking’ in which the statistics furnished by the various departments and agencies dealing with the problem of crime might be brought together and examined with the hope of determining how far the problem is being adequately met.”

When an effort is made to examine the police statistics of arrests, it is found necessary to rearrange the figures according to the classification of felonies used by the municipal court. Then it appears that such terms as “larceny” in the police statistics include misdemeanors as well as felonies. Finally, the statistician is forced to use statistics of years that do not correspond. The fourteen pages of statistical discussion of the social status of offenders is prefaced by the remark that of the ten facts most necessary to know about each case the municipal court records none. The scientific study of the crime problem in most large communities is a nightmare. At the same time, the importance of this line of research is believed to be the chief argument for the correlation of statistics of all agencies dealing with crime.

When we come to outline a plan of procedure for improving the situation we should demand that any new scheme grow out of present circumstances and needs in a common sense way. The following three principles should be insisted upon:

1. The sole object of criminal statistics is to aid in the solution of the crime problem. Secondly they have a bearing upon other social questions. More specifically, such statistics should serve to measure crime and the effectiveness of the expedients, public and private, adopted to reduce and prevent it.

2. To be reliable and most useful, criminal statistics must be so correlated as to represent a continuous and complete view of the offender and of the process of treatment, beginning with his first overt act: the report of the offense, apprehension, preliminary custody, trial, conditional liberation, incarceration under sentence, conditional discharge, after-care. The criminal is a unit, likewise the problem; so should the process be, and so the statistics. The facts we gather

and tabulate should approximate the freshness and fullness of a physician's case description. As corollaries, it is plain that the terms and classifications, as well as possible, must be standardized and uniform, and that the facts compiled in different States should agree in their main outlines. The cogs must fit.

3. Our criminal statistics must be useful from the standpoint of both administration, in the broad sense, and independent research. We will remain in the present unhappy deadlock until the criticising professor, the practical warden, the judge and the police chief get their heads together. Out of this grow two corollaries:

(a) We must respect and utilize the ordinary channels of administrative control and supervision, and

(b) We must be reasonable in our demands on hard-worked officials, leaving to special research the more elaborate examination of facts.

In conformity with the foregoing, it is maintained that the stronghold of a successful system for the United States would be a series of central state authorities who shall supervise the recording and collection of statistics of every character. It is in accord with the principles of successful public administration and recent tendencies toward simplification in the departments of state governments, that these state bureaus be subordinate to bodies with other supervisory or administrative functions. The policy has the advantage of immediate publication of statistics and application of conclusions through administrative and legislative measures, and of ironing out the errors of local officials in gathering statistics by that authority which is best equipped to train them. The supervisory or administrative duties of such a department would provide a balance-wheel of utility for every form adopted. This plan of state bureaus has the obstacle of the notorious divergence in legal and penal formulas among the States, but it is believed that such differences will be eliminated faster according to the present proposal of overhead supervision than by any other means. Such a plan likewise is the best guarantee of purity of the statistics at their source.

It follows that these state organizations, as far as possible, should be utilized in gathering federal statistics. The ideal of a United States registration area for criminal statistics such as we now have for vital statistics has much to commend it. The present methods of the federal census should be continued until the state scheme becomes fully established.

The proposed development, however, will remain a paper plan

unless it is fostered through voluntary organization. The Bureau of the Census is not suited to propaganda work. The census officials are, of course, earnestly desirous of improvements in this field. It is anticipated that they would be the chief official reliance in any progressive movement of the kind proposed. But it appears to be desirable that a committee be created by appointment from appropriate national groups to aid in the establishment or improvement of state bureaus and in the standardization of their statistics. Such a committee should be reasonably small and representative, and should consist of recognized authorities. It should continue until such time as the public organization is sufficient. It would be an irretrievable error not to provide with practical intelligence for harmonious statistics of all of the branches of the treatment of crime. We therefore submit, separate from this report, but as a corollary to it, a resolution proposing that the Prison Association take the lead in the creation of such a general committee. This is the senior organization of the kind in the country, and it is fortunate that the representative of the United States upon the International Prison Commission recommended by you for appointment last year is one of the leading statisticians of the country. This committee should be instructed to prepare graded schedules for the different types of institutions and agencies, in co-operation, where possible, with state bureaus, and always, of course, with the Bureau of the Census. They should be a source of advice in establishing state bureaus and in developing their policies, and they should help correlate the work of these state units. The newer movements in social work should be taken into account, as well as international standards. The committee should be authorized to raise funds for its work from either public or private sources.

In support of this proposal you are reminded of the fact that good criminal statistics are necessary for intelligent legislation and administration. What is said to be the largest item in the public budget, that for combatting crime, should not be spent in ignorance. Good statistics would be a source of reliance for public officials in allaying criticisms, such, for example, as that of laxity or severity in prison administration. This steady, deliberate form of inquiry into the usefulness of social measures, not scandalous investigations and ephemeral surveys, is the only substantial basis for progress. The history of other countries shows that building up the statistical system is necessary to progress in the treatment of crime. Finally, it can be shown that there are many factors in the present situation encouraging to such an organization. Everywhere search is being made

for new facts, for better methods, and for greater information on the part of judicial and penal agencies, such, for example, as the recently organized municipal courts. There is manifest a splendid good will of individual public officials toward such improvements, and behind them stand our extensively organized and powerful national societies, such as this American Prison Association.

Author's Note: A report of this character can scarcely be expected to represent in detail the consensus of opinion of the members of the committee. Many suggestions from committee members have been incorporated, however, and an early draft of the report has been revised on the basis of their criticisms. The only dissent from the report as it stands that the chairman knows of is the unwillingness of Mr. Hoffman to subscribe to the series of definitions and statements of principles beginning on page 23. To the remainder of the report he agrees. The assistance of Dr. J. A. Hill, of the Division of Revision and Results of the Bureau of the Census, is acknowledged with gratitude.

AN HISTORICAL SKETCH OF MILITARY LAW¹

RIDLEY McLEAN.²

In my annual report, I have urged the appointment of a committee to secure a series of papers on important topics appropriate to consideration and discussion by this society. I furthermore pointed out the advantage of choosing these topics systematically with the object of covering in the proceedings the broad subject of military law, before branching off to an investigation and discussion of the more intricate questions involving constitutional law and relations with the judiciary:—questions which offer a broad field for our activities in the future. With this in mind I endeavored in my report to set forth, subject to comment of our members, the different meanings sometimes applied to the term Military Law. By the same token, it seems pertinent to review in a very brief sketch the history of military law.

We have seen that military law must be distinguished from martial law; that it is the code governing the discipline of a military body in the service of the State; that it is the law administered by the military power upon those in military service; that military courts form no part of the judiciary and, except as to jurisdiction, that their procedure is not subject to review by civil courts; and finally, that they are courts for trial and punishment of violations of laws enacted by Congress for the government of its military forces—courts created in the Executive Branch of our Government by authority of that clause of the Constitution which authorizes Congress to make rules for the Government of the land and naval forces.

It is by virtue of this clause that Articles of War and the Articles for the Government of the Navy were enacted, and these "Articles" designate their own offenses, provide their own courts of adjudication, and prescribe their own punishments.

What is the history of this separation of the military from the civil? Despite their wisdom, how did the draftsmen of our Constitution arrive at this feature so essential to military efficiency?

The answer is naturally, "From the English upon whom all of our early instructions were based." True, but how did it arise with the British? The early history of military law to those not already familiar with it is interesting, and, in that it gives an idea of the fundamentals upon which military law is based, is highly instructive.

¹Read at the annual meeting of the American Society of Military Law, Chicago, August 30, 1916.

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It must be borne in mind that this sketch treats of military law in its strict meaning, and it must not be confused with martial law, Military Government, or the general laws relating to land or naval forces.

EARLY HISTORY.

In early times Great Britain was divided under the feudal system into many fiefs, each of which furnished forces to the crown, when required. Troops were thus raised for a particular service and were disbanded upon the cessation of hostilities. There was no permanent military force, or standing army; military forces existed only in time of war, and these men were retainers of the Crown rather than servants of the State.

The Crown, therefore, of its mere prerogative, made rules and regulations for the government and discipline of its troops while thus embodied and serving. These rules were known as Articles of War.

In the reign of Henry VI the offense of desertion was made a felony by statute. With this single exception, the Articles of War, issued as above described upon the mere prerogative of the Crown, remained practically the sole authority for the enforcement of discipline up to 1689, when the first Mutiny Act was passed by Parliament. This Act was necessitated by a mutiny (the details of which are unnecessary here) with which the Crown by its mere prerogative was unable to cope. Hence this Act defined and prescribed mutiny, treason and the like, and conferred authority upon the Crown to govern the Army under prescribed rules.

The military forces of the Crown then for the first time were brought under the direct and immediate control of the State. Even in time of Cromwell and Charles I, the then existing parliamentary forces were governed not by act of legislation, but by Articles of War similar to those issued by the King; these articles were authorized by an ordinance of the Lords and Commons which were in that respect exercising the prerogatives hitherto exercised by the Crown.

The power of law making by prerogative of the Crown was held to be applicable during a state of war only, and attempts to exercise it in time of peace were ineffectual. Subject to this limitation it existed for considerably more than a century after the first mutiny act.

FIRST MUTINY ACT TO 1803.

During this period the Mutiny Act was during certain years suffered to expire, but a statutory power was given the Crown to make Articles of War operative in the Colonies and elsewhere beyond the seas at all times in the same manner as those heretofore made by

prerogative had operated in time of war. This continued up to the passage of the Mutiny Act in 1803, which effected a great constitutional change.

FROM 1803 TO 1879.

With the Mutiny Act of 1803 the power of the Crown to make any Articles of War became altogether statutory and the former prerogative was merged in the Act of Parliament. Thus matters remained until 1879, when the last Mutiny act was passed and the last Articles of War promulgated. The Mutiny Act legislated for offenses for which the sentence of death or penal servitude could be awarded, and the Articles of War, though repeating the provisions of the Mutiny Act, constituted the direct authority for dealing with offenses for which imprisonment was the maximum punishment, as well as numerous matters relating to details of trial and procedure.

In 1879 the Mutiny Act and the Articles were consolidated into one harmonious act, and after two years experience with it, the authorities having found it capable of improvement, this act was in turn superseded in 1881 by the Army Act. This Act contains a proviso saving to the Crown the former prerogative to make Articles of War, but provides that such Articles shall not apply to any crime made punishable by that Act. Inasmuch as the Army Act covers every conceivable crime, this retaining of the ancient prerogative will be seen to be an empty formality.

SUMMARY OF DEVELOPMENT OF ENGLISH MILITARY LAW.

From the above it will be seen that the development of Military Law in England divides itself into three distinct periods—

(1) Prior to the first Mutiny Act (1689). During this period the military forces were regarded as personal retainers of the sovereign rather than servants of the State; they were governed by will of the sovereign.

(2) *1689 to 1803.* Army recognized as a permanent force. Inside of realm governed by statute or by sovereign under authority derived from and limited by statute; outside (that is, in colonial possessions) by prerogative of Crown under authority of statute.

(3) *1803 to 1879.* Governed directly by statute, or by sovereign under an authority derived from and limited by statute.

(4) *After 1879.* Subsequent to this date the sovereign could not make Articles of War, but he could prescribe rules of procedure not inconsistent with law regulating the government and administration of the military forces. The statutes governing the land forces are contained in the Army Act. This contains the Mutiny Act and

Articles of War combined and harmonized, and is reenacted annually because of a constitutional tradition that a permanent standing army is contrary to the free institution of Great Britain, a clause in the preamble reciting the illegality of the realm having a standing army in time of peace except by consent of parliament.

AMERICAN DEVELOPMENT.

From the above it will be seen that at the time of gaining our independence, the Army of Great Britain was governed at home by statute, in the Colonies by Articles of War issued by prerogative of the Crown; therefore, it is but natural that, independence having been gained through force of arms, strict articles governing the discipline of the armed forces should have been adopted; the new State having been based upon republican ideas, it also followed that the gradual growth of the Mother Country through centuries should have been at once adopted and that the Articles of War be authorized entirely by legislature. This system was accordingly adopted in the beginning; Congress enacted the statutes known as Articles of War and has from time to time modified them, leaving to the President as Commander-in-Chief of the Army and Navy authority to prescribe regulations for the armed forces not inconsistent with law. Thus in our very cradle we adopted in effect the laws which England arrived at a century later.

MILITARY LAW AS APPLIED TO THE NAVY.

The "Articles for the Government of the Navy" correspond in the Navy to the Articles of War in the Army. Tracing back the history of these Articles, I have found that in 1749 in the reign of King George II an act was passed amending prior acts relating to the sea forces of the realm. In a very long preamble it provides that numerous prior acts, each of which is described at length by its title, "shall be and the same are hereby repealed to all intents and purposes whatsoever." The first and earliest of these acts mentioned as being repealed is "an act passed in the thirteenth year of the reign of King Charles the Second entitled 'An act for establishing articles and orders for the regulating and better government of his Majesty's Navies, ships of war, and forces by sea.'"

The date of the act referred to was some years earlier than the first Mutiny Act, and as the title uses the words, "better government," it would seem to indicate the existence of still earlier statutory enactments concerning the sea forces, but of this I have been unable to find a record. Certainly, therefore, as early as about 1650 the Navy was governed by Articles enacted by the legislature.

In America we find the Colonial Congress on November 28, 1775, passed Articles for the sea government of the United Colonies. These articles bear a remarkable similarity (as would be expected) to the Articles of 1749, passed in the reign of King George II. These articles of 1775 apparently governed until the first session of the first congress, 1799, passed Articles for the Government of the United States Navy. These were in turn superseded the following year by an act entitled "Articles for the Better Government of the United States Navy." These were extensively revised in 1862 and have been subject to certain changes in individual articles from time to time since that date, but no general revision has been enacted. The present Articles therefore bear (especially in form) a surprising resemblance to the Articles of 1749. Even the oath taken by members of a court relative to not divulging the vote of a member is illustrative of the antiquity of many of our present customs.

SUMMARY.

From the above we see—

(1) That the Articles of War were in early times actually what the name implied, viz., Articles for the Government and Discipline of the Fighting Forces in Time of War, such forces being assembled only in time of war. Being then regarded as personal retainers of the King rather than as servants of the State, the King issued these Articles as his prerogative.

(2) That gradually these conditions changed; fighting forces were maintained in peace as well as in war; these forces began to be recognized as servants of the State; the State began by enacting laws fixing penalties for only the most serious offenses, and after centuries of gradual change, only in recent years has the British Army come to be governed entirely by statutory enactment, the Crown being merely allowed to make regulations for administration of these forces.

(3) That in so far as the United States is concerned, each branch of the military forces has from the birth of the State been governed by its own Articles, modeled much after the parent country, enacted by legislature, enforced by military courts, and the President as Commander-in-Chief is granted authority to make regulations not inconsistent with law.

Thus it is seen that military law is a fundamental branch of the national law, has the same foundation, and its rules, its extent, and its limitations are as well defined as any other branch of the law

administered by the federal government, though it forms no part of the judicial branch thereof.

Military law extends its jurisdiction to every person regularly commissioned, appointed or enlisted in the organization in question, in time of war to all offenses, and in time of peace to practically every offense except murder committed within the United States. Though an officer or man is in all respects subject to the provisions of civil law, the sweeping jurisdiction of military courts, combined with the exclusive federal jurisdiction over federal property, gives practically to military courts in the United States a wider latitude and broader jurisdiction than that which is accorded in Great Britain, but in time of peace the civil law is recognized as supreme and military officers must ever remember that they are responsible to and may be required to render account in civil courts for their official acts which may be in contravention of civil law.

FRENCH AND AMERICAN CRIMINAL LAW

THREE POINTS OF RESEMBLANCE

ROBERT FERRARI

French criminal procedure is very different from American procedure. But underlying the diversity there are certain similarities which have not been noted. The French system is described as an investigatory; and the American as an accusatory system. Under the accusatory process, in order that an action may be begun, there must be a complainant. The matter is presented to the judge, who acts, for the purposes of the investigation, simply as a passive receptacle, and who gives judgment upon the basis of the evidence that is presented before him. On the other hand, under the investigatory system, no specific complaint is necessary in order that an action may be begun; and the judge may, of his own initiative, begin and carry through an investigation. There are three ways in which an investigation may be begun: by specific complaint made by the victim of a crime against the perpetrator of the crime; by denunciation made by any individual who has become cognizant that a crime has been committed, and who does not know the perpetrator of the crime; or by proceedings on the part of the *Juge d'Instruction* himself. The differences between the two systems are perfectly obvious. But if we go beneath the surface, and if we investigate our own system a little deeply, we shall see that in some instances we are not so all-powerless in the search for crime as one would believe from reading an account of the accusatory process.

In the American system we have John Doe proceedings. There are obvious differences between John Doe proceedings and the proceedings of investigation by the *Juge d'Instruction*. But the fundamental and characteristic element in the investigatory process is found in the John Doe proceedings. That element is the search for a crime which has been committed, and for a criminal who committed it. It is really a fishing excursion to discover the author of a crime.

The French procedure of indictment is entirely different in theory from the American procedure. In France, a body of Judges decides upon an indictment; the Chamber is called the "*Chambre de mise en accusation*." The *Juge d'Instruction*, who is our magistrate and our District Attorney rolled into one, and more, has already made an investigation of the matter and the documents in the case—the *dossier*—come before the Chamber of Indictment. In contradistinction from

our own system, the accused person may be represented at the hearing in the Chamber. The District Attorney is there to present the matter for the side of the Government. After hearing, the Court decides whether the facts in the *dossier* constitute a crime. Here, then, you save a double guarantee for the accused: the guarantee of a technical body of men, and the guarantee of judges learned in the law. In this particular instance, in the procedure, the French are more scientific than we are. It would seem to be logically perfectly natural to have a technical person or body of persons, learned in the law, to decide as to whether the facts in a particular case constitute a crime or not; but we, for historical reasons, have continued to operate by means of the Grand Jury, which is a popular body. The French procedure gives us a suggestion for having things done by experts. Time is saved, money is saved, and liberties are preserved. Our Grand Jury system should be abolished. Whatever its uses once upon a time, it has no good uses now. Theoretically, our system is wrong because a popular body is brought into being for the purpose of deciding concerning a technical matter; and practically the system is vicious, because it violates the theory of the law. In actual practice, the Grand Jury does not decide for itself as to whether the facts related before it constitute a crime, but allows the District Attorney to decide for it. A District Attorney presents the case, adduces the witnesses and all the testimony, and then advises the Grand Jury what to do. In a great number of instances, there is no advice, but actual disregard of the functions of a Grand Jury and overriding of law. The District Attorney reaches a certain decision, and that decision is simply ratified by the Grand Jury. The exceptional case where the Grand Jury acts against the wishes of the District Attorney is so rare that it need not be taken into account.

At this point, we come to a resemblance between the French system and our system, in spite of the fundamental difference in theory. The practice in America approaches the practice in France. The District Attorney is a technical man, the District Attorney is supposed to be learned in the law. It is the District Attorney who imposes his wishes upon the Grand Jury. Here, then, we have a guarantee, it seems, for the accused. But what does this guarantee amount to, when we consider, not the theory of the law, not the theory of the functions of the District Attorney, but the exercise of the functions of the District Attorney? The District Attorney is a quasi-judicial officer—in theory. But in practice, how different! He is called almost everywhere a Prosecuting Officer, and it is rare

to see him exercising his functions in any way except in a way in which a prosecuting officer would exercise them. "But," it may be said, "it is true that the District Attorney is a Prosecuting Officer; but he becomes a prosecuting officer only after he has investigated a case impartially, and has come to the conclusion that the person is guilty; but then, proceeding upon that basis, he attacks and attacks, with all his might." The general public sees only the latter portion of the process in a case that comes before the District Attorney. But the former process, up to the time of the decision of the District Attorney, is entirely hidden from the view of the public, and so a wrong idea is got, concerning the exercise of his functions. But this argument is more specious than real. Anyone who has seen an investigation carried on by a District Attorney knows that the investigation is almost always one-sided. A complainant presents himself; witnesses are heard in support of the complaint. The person who is complained against is not notified by the District Attorney, and if the accused wishes to bring evidence in exculpation before the District Attorney, the District Attorney will not allow it. After this preliminary investigation by the District Attorney, the witnesses are heard by the Grand Jury. But what witnesses are heard? Only the witnesses presented by the District Attorney—witnesses all on the side of the complaint. And by law the accused is prohibited from appearing before the Grand Jury. How many cases would be thrown out at the threshold if the Grand Jury only heard the other side! The French system makes it possible for the other side to be presented, and for that reason, among others, it is to be preferred to ours.

The Grand Jury system is doomed. In England, under the stress of war, a discussion has already been begun concerning the utility of it. It is said: "To summon twenty-four grand jurors to deal with a charge of stealing boots" (see "The Times" of January 6th) "is hardly to advance the economic organization of the community for the strain of war." The question may freely be asked in America. To summon twenty-four grand jurors to deal with almost every charge—with the possible exception of charges for political offenses—is hardly to advance the judicial organization of the community and the interests of society.

The doctrine of attenuating circumstances is a doctrine that seems to be very far from anything we have in our own system. And yet search will bring to light two very remarkable similarities. The doctrine of attenuating circumstances was invented because of the rigors and the inflexibility of the law under the old régime. The

Napoleonic Code made a great many changes for the better in the Criminal Law of France, but still it retained some of the inflexibility and severity of the old régime. After the dissolution of the Empire, there were rapid changes in the social organization of France, and immediately people began to perceive the disharmony between the code under which they were working and the actual facts of life. The law was rigid, and there was no power that could mitigate it. Jurors, who were convinced of the guilt of individuals, acquitted them simply because the punishment for the crime with which they were charged was too great for the crime. A great deal of scandal in the administration of Justice was brought about in this way. In 1824, the Judge was given power to mitigate the punishment by the application of attenuating circumstances, but jurors were distrustful of the action of the judge, and acquittals continued the even tenor of their way. Another change came in 1832. It is under the system that came into existence in that year that the French jury works now. The right of mitigating the punishment was taken away from the judge and given to the jury. The jury became, to all intents and purposes, and is today in every case, with the exception of several which we shall not consider here, the judges of the facts and of the law.

The first observation to be made is that here you have a clash with the principle underlying the institution of the Chamber of Indictment. In the case of the application of attenuating circumstances by the jury, it is a popular body, unskilled and untrained, that decides concerning the fate of an individual. Not only concerning his fate in respect to the matters of fact presented before it, but also in respect to the matters of law. The determination of questions of fact is very difficult, but the determination of questions of law by a jury is perfectly impossible; and yet this illogicality exists under the French system. The absurdity is carried to an extremity in cases of the *crime passionnel*. Not only is it more difficult, in these cases, to tell what attenuating circumstances are and how much weight should be given to the attenuating circumstances presented; but the law is actually violated by the jury in acquitting after an admission by the defendant of guilt. The acquittal is based on the attenuating circumstances that have been adduced at the trial. One of the curious features of French Criminal trials in the *Cour d'Assises*—a feature which is perfectly comprehensible, when the system is understood—is that most of the defendants who come to the Bar of Justice have already pleaded guilty to the *acts* with which they are charged. The

attorney for the defendant in these cases lays stress upon the attenuating circumstances—which, under the law, would not excuse the defendant, but which, when presented to the jury, will be likely to make the jury acquit, in violation of the law. The brazen-faced manner in which the jury is often asked to disregard the law for a higher, unwritten law, a law of justice and a law of conscience, is one of the great features of a criminal trial in France. The President of the Tribunal of three judges who sit in the *Cour d'Assises* never interrupts and reproves the attorney for the defendant. But I shall treat this matter more fully in another communication. The facts in crimes of passion are extraordinarily intricate and varied; there are questions of anatomy, physiology, psychology, medicine, sociology, philosophy and jurisprudence. And yet the jury is given power to decide these difficult questions! But the Code lays down certain punishments which must be meted out to individuals who are convicted of crimes with attenuating circumstances. The Code nowhere says that attenuating circumstances entirely excuse a murder; but the law lays down certain rules by which the Court is to be governed in the sentencing of the individual who has been convicted of murder with attenuating circumstances. The jury, however, overrides the law, makes a popular interpretation of attenuating circumstances, drives the doctrine of attenuating circumstances to the extreme, and decides in these cases that the attenuating circumstances have completely refined and dissolved the crime indicated by the law to have been committed by the facts presented in Court.

The vicious procedure on the part of the jury has infected Military Courts also. In these courts we should expect a different treatment to be accorded to individuals who come there accused of crimes of passion. The jury is made up of seven officers of the Army—persons who, one would think, would be likely not to be affected by the popular notions. But in fact the case is far otherwise. I had the privilege of listening to one of the greatest speeches that I have ever heard. The narration of the events leading up to the commission of the crime was far and away more eloquent than the narration of facts in the White murder trial. The attorney was defending a woman for sheltering a deserter from the army. The appeal was a most impassioned appeal, full of logic, social vision and sentiment, and all clothed in the sweetest of melody. I have never seen an audience more wrapped up, and I have never seen judges so enveloped in the presentation of a subject. I was wondering what would happen. The arguments that had been presented were not sufficient to acquit. The

case was a perfectly clear case of guilt, but, by the application of the doctrine of attenuating circumstances, the guilt could have been refined down to almost nothing. I was very, very anxious to see the result, and I expected an exceedingly small punishment. But in a few moments the Court came back and announced a conviction of the defendant, with no attenuating circumstances, and a heavy penalty. It was a sort of defiance to the wonderful speech that had been delivered. If Rufus Choate was able to win an unwilling jury that was hard set against him simply because of his reputation, this attorney, who merited an acquittal—and really, in this case, an acquittal would not have harmed—could not.

This was the treatment accorded to a *woman of the street*. But, behold, the treatment accorded to a *man* who commits murder because one of his mistresses has been unfaithful to him! I attended two trials of this sort. In the first case, there was an acquittal, although the facts were proved beyond a shadow of doubt. In the second case, the Court Room was crowded with the *Beau Monde*, with the women of fashion. The word had gone out that it was going to be a very, very exciting trial, and a great orator was going to plead. The facts were very solacious, and the whole of Paris of the upper world—so-called—that could come in, was present. The facts were perfectly clear and the guilt of the defendant was beyond doubt. The Court was being watched. It felt a responsibility different from the responsibility that is felt by an ordinary, popular jury. It saved its face by bringing in a verdict of guilty. But this verdict of guilty was destroyed by the application of the doctrine of attenuating circumstances and by the application of the Béranger law. The man was convicted to two years' imprisonment, but execution of the sentence was suspended by application of the Béranger law.

Acquittals for *crimes passionnels* are a purely Parisian institution. In the provinces, a defendant in such cases gets short shrift.

The recommendation to mercy under our system approaches the application of the doctrine of attenuating circumstances; but the jury can make only a recommendation to the judge. The judge is the individual to take that recommendation into consideration if he pleases. Under the French law, a determination by the jury of the existence of attenuating circumstances is binding upon the Court. But in the Anglo-American system of law, the same causes have tended to produce nearly similar effects. The law was felt to be too rigid, and the recommendation to mercy was invented in order to mitigate the rigors of the law. But the American system is better than the French system,

inasmuch as the judge is a better instrument for the application of the doctrine of attenuating circumstances than a popular body such as the jury.

But more recently in America we have had the introduction of Probation. A defendant is convicted, and after conviction the judge seeks light from the Probation Officer concerning the circumstances surrounding the commission of the crime and concerning the history of the individual who has committed the crime. All the facts which are, as a matter of course, brought out in a French trial in Court, may, in America, be brought out by the Probation Officer and by persons interested in the conviction, in Court or in the Chambers of the Judge after conviction. Again, the American system is preferable to the French system. A judge, skilled and learned in the law, just as experienced in the affairs of life and more indeed as the jury, and very experienced in the treatment of criminals, decides the fate of the convict. But our American system does not go far enough. It is not the judge, a legal officer, who ought to decide the fate of a person who has been convicted of a crime, but a Board of Parole. The convict should be sent to prison. All the facts concerning his history should be brought out and kept on record, all the facts of his history after his conviction and introduction into prison should be followed and a record kept, for the purposes of the Board of Parole. The Board of Parole, a body, technical, specially suited for the work because of its constant dealing with criminal matters, and because of its constant supervision of the individual concerned, is better fitted to decide the length of imprisonment.

A TRIAL FOR WITCHCRAFT SIX HUNDRED YEARS AGO

WILLIAM RENWICK RIDDELL¹

Edward of Carnarvon, the Second Plantagenet King of that name, was a tall, handsome and well-built man—an athlete and a mechanic, a huntsman and a musician. He had many charming qualities, but he was not fitted for the office of King of England in the stern days of the 14th century.

His favourite companions were not such as a monarch should choose; and to them—men, some of them, of low birth and all without judgment—he gave up much of the government of his kingdom.

Piers Gaveston, a Gascon whom he had created Earl of Cornwall, was got rid of by murder after long resisting the English nobility; but the Despensers, father and son, for long retained their place as royal favourites.

The rapacity of those around Edward had been notorious from his boyhood; even in his father's life-time, and when he was only ten years old, but with a separate establishment, "the townsfolk of Dunstable bitterly complained of his attendants' rapacity and violence." (Ann. Dunst. p. 392).²

Gaveston's conduct was equally bad and equally notorious; and the Despensers did not fall behind him. It is, however, not unlikely that the favourites were blamed for much that the King should himself answer for.

The following story will give one curious result of the ill-will which flowed from the greed of the Despensers and their master.

In the eighteenth year of King Edward II on Wednesday in the Vigil of All Saints, 1324,³ Robert Marshal of Leicester, appeared before Simon Croyser, Coroner of the Hospital, and lodged an appeal against John of Nottingham and many others. The proceeding of approvement was well known in the criminal law of the period and for a long time after: one who acknowledged his own guilt, in order to escape punishment for a felony, "appealed," that is, he accused another of being an accomplice. It would not do simply to say that

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²See Dict. Nat. Biog., vol. 17, p. 38. A fairly full and quite accurate account is given of Edward II in this work. Cf. Enc. Brit., *sub voc.*

³The facts are taken from Parl. Writs, vol. II, div. II, p. 269, reprinted in an interesting publication of the Camden Society of London: "A / Contemporary Narrative / of the / Proceedings / against / Dame Alice Kyteler / Prosecuted for Sorcery in 1324 / etc., etc., / London / etc., etc., etc., / MDCCCXLIH."

The Appeal is in Anglo-French, the remainder of the proceedings in Latin, mediaeval but fairly good. The translation is my own and is almost literal.

the other had committed a like offense; he had to be charged with taking part with the appellor (probator) in the crime confessed by him.⁴

The charge in this instance was an extraordinary one. Robert said that he had been living with John of Nottingham in Coventry; that John was a "nigromauncer" or sorcerer; that Richard "le Latoner"⁵ and some twenty-five others whom he (Robert) named, had, on the Wednesday next before St. Nicholas' Day in the previous year, (1323) come to see John and him. He said further that they wished to know if their business would be kept secret; for, if so, John and Robert would have much profit from it. On being assured by both that they would not disclose it to anyone, the visitors made known what they wanted.

They said that they were so oppressed by the Prior of Coventry and by the demands for maintenance⁶ which were made upon the Prior by the King, Hugh le Despenser, Earl of Winchester,⁷ and Hugh

⁴The Appeal must be in proper form. If the appellor simply charged the appellee with a similar crime, he having confessed his own guilt and not bringing forward an accomplice to suffer for it, would be promptly hanged. The accused would then be admitted to bail to answer the charge if any preferred it, or if he could not find bail, he might adjure the Realm. A most interesting case of the kind is to be found in Maitland's "Pleas of the Crown for the County of Gloucester," p. 64.

Blakstone, Comm., IV, p. 330, puts it accurately: "A. person indicted of treason or felony . . . doth confess the fact before plea pleaded and appeals or accuses others his accomplices in the same crime in order to obtain his pardon."

It does not appear how Robert le Mareschal de Leycestre came to be charged, nor why he should appeal in the Court of the Coroner of the Hospital, —an officer whose jurisdiction was very limited in area and extent.

⁵Richard the Latoner or Lattener, a maker of or worker in latten, a mixed metal of yellow colour, much like brass or identical with it. "Sam Slick's" joke on Latten (Latin) will occur to everyone.

⁶"Maintenance"—the practice of kings coming with their retinue to visit a subject, balancing the fearful expense with the great honour, was well known and long survived. Apparently the King, with the Despensers, was staying with the Prior at Coventry, and the Prior had to squeeze his tenants to support the expense to which he was put. The Despensers, moreover, were openly accused by the nobility of extortion; they made no difficulty of taking a subject's goods with or without colour of right; and colour of right there always was for an officer of the King to take what he wanted from a subject for the King's use (especially on a Royal Progress), paying for it the price the officer thought fit. Old abuses die hard, but "purveyance" is long dead.

See Tomlins' Law. Dict., sub voc. "Pourveyance"; Black Comm., I, 287, IV, 116, 424, 439.

⁷Hugh le Despenser (the elder) was the son of the Justiciar of England with the same name. Born in 1262, he became a favourite of King Edward II, especially after the death of Piers Gaveston. He was executed as a traitor at Bristol in 1326. In the original he is called "Counte de Wyncestre."

le Despenser the younger⁸ that they could not live. They asked John if for what they would give him he would undertake to kill the King, the two Despensers, the Prior and others they named, by his necromancy and his arts. He said that he would. Thereupon an agreement⁹ was entered into that John should be paid £20 sterling¹⁰ and have his support in any religious house he might select in England; that Robert should be paid £15 sterling for assisting "in the felonies afore-said"—of which, on the Sunday next after St. Nicholas' Day, John should be paid eleven marks¹¹ and Robert £4 by the hands of John, son of Hugh of Merrington¹² and John le Redeclerk, at the house of Richard le Latoner. They were also to receive seven pounds of wax and two ells of canvas,¹³ of which John was to make seven waxen images. One of these was to be of the King, crowned; the second of the Earl of Winchester; the third of Master Hugh, his son; the fourth of the Prior of Coventry; the fifth of the Cellarer; the sixth of Nichol Crumpe, the Prior's Seneschal; and the seventh of one Richard of Sowe.¹⁴ It was agreed that an experiment should be made on Richard of Sowe and the image made of him, to see whether or not the other images were certain to produce the desired effect.

John and Richard, on the succeeding Monday, with the knowledge and consent of their customers, began to exercise their mystery in an old house about half a league from Coventry, below Shortley Park, where they remained over their work till the Saturday next after Ascension Day.

When they were in the said old house on Friday next before the feast of the Holy Cross, about midnight, John gave Robert a leaden pin with a sharp point and told him to thrust it a depth of two inches into the forehead of the image of Richard of Sowe, in order to test the powers of the other images. He did so. The following morning John sent Robert to the house of Richard to see in what condition he was,

⁸The younger Hugh le Despenser became a baron, shared his father's elevation, and was executed at Hereford about a month after his father's death. They were both rapacious, insolent, violent, disregarding of law and of everything but themselves and their King. In the original he is called "Monsieur Hugh le Despenser le filz."

⁹"Et sur ceo là fesoient covenant ove luy;" "and thereupon they made a covenant with him."

¹⁰"XX.li. d'esterlings"; "£20 of the Easterlings." The derivation of "Sterling" is well known; here we have the original.

¹¹The mark 13/4: 11 marks equals £7 6s 8d.

¹²Merrington is a parish in Durham.

¹³"Ells" "aunes." An English ell was 45 inches. "Canvas," "canevace," "canabasium," from Latin "canabis," hemp, was a linen or hempen cloth.

¹⁴"De Sowe." The Sowe is a small river in Warwickshire, running south-east to the Avon, and Sowe is a parish on the river.

and he found him "braying" and crying "harrou,"¹⁵ not being able to recognize anyone and having lost his memory. Richard remained in the same condition until the Sunday before Ascension, when John drew out the pin and placed it in the heart of the image, where it remained until the Wednesday following, when Richard died.

The trial or experiment¹⁶ made on Richard in this way was with the knowledge and consent of Richard le Latoner and the others named.

On November 9th, 1324, a writ of certiorari was issued from the Court of King's Bench to the Coroners of the Hospital, under which the said appeal was removed into the King's Bench.

A writ was thereupon issued to the Sheriff of Warwickshire to arrest and keep safe, etc., John of Nottingham, Richard le Latoner and the others named, if they should be found in his bailiwick; and to have their bodies before the Court in Hilary Term. John was arrested under a special warrant and committed to the custody of the Marshal of the King's Bench, while the Sheriff of Warwick returned that the others were not to be found in his bailiwick.

But all of them, with the exception of three who will be spoken of separately, appeared—John brought in by the Marshal, the others voluntarily rendering themselves into custody. The appellor or probator also appeared. Since all were present, the appellor was formally asked if he desired to prosecute his appeal, and "*dicit quod sic*,"¹⁷ he answered in the affirmative. The accused appellees denied the charge *in toto*, and "*de bono et malo ponunt se super patriam*"—for well or ill put themselves upon the country.¹⁸ A *venire facias* was awarded to the Sheriff of Warwick to have a jury for a trial at Bar in Easter Term,¹⁹ and in the meantime appellor and appellees were remitted to the Marshal's custody.

¹⁵"Bryaunt et criaunt 'harrou'!"—"harrou" or "harrow" is the same as "haro," the Norman "hue and cry." It will be seen that the sorcerers carried out the rule of the mediaeval physician, "*fiat experimentum in corpore vili*."

¹⁶"La proeve faite du dit Richard."

¹⁷It was the practice when anyone entered an appeal of any kind to require the appellor to give security for the prosecution of the appeal. If he could not find security, "*gaola ejus plegium*"—"the gaol his pledge"—was the rule; this was always the case when the appeal was by a confessed felon. If the appellor in an ordinary case did not desire to prosecute his appeal, he and his pledges were "in mercy"; i. e., were liable to be fined, and almost, if not quite always, were fined. If an appeal like this by a confessed felon was not proceeded with, the appellor was hanged out of hand.

¹⁸Our Canadian petit juries are in criminal cases told "on his arraignment he hath pleaded Not Guilty and for his trial hath put himself upon the country, which country you are." Trial by the country is trial by jury.

¹⁹The trial was to be at Bar, i. e., before all the Judges of the Court of King's Bench, and at Westminster; but it was necessary to have a jury *de visneto*, of the vicinage, to try the case, hence the *ven. fac.* issued to the Sheriff of Warwick.

The appellees soon found bail in London, and were released to appear "ad quindenam Paschae."

On that day all but John of Nottingham again appeared, the appellor brought in by the Marshal, the appellees appearing under the recognizances; but the case was adjourned to Hilary Term, and the Sheriff was to have twenty-four jurors "*tam milites quam alios*" of the vicinage of Coventry²⁰ to try whether the said Richard le Latoner and others were guilty of the said felonies and crimes or not. The appellor again went to the Marshal's custody; the appellees were bailed. As for John of Nottingham, the Marshal of the Court of King's Bench returned that he had died in prison.²¹

Trinity Term came around and with it appeared in Court the appellor and appellees (one had died in the meantime) and also jurors of the vicinage. One of the missing appellees, Richard Grauntpé, also came in and rendered himself to the Marshal, joining his fate with that of those who were already in Court; he also put himself upon the country.

They were all acquitted by the jury of twelve, "*de visneto de lowe*," [sic., qu. Sowe?] and accordingly discharged. The appellor was remitted to prison until the Court should advise as to his case.²² The jurors also found the death of Peter (or Piers) Baroun, one of the appellees. As to the two appellees still missing, the sheriff had command to arrest them if they should be found in his bailiwick and have them before the Court.²³

²⁰See last note. The jurors were allowed and expected to use their own knowledge.

²¹A perusal of the old records will show that a very large per cent of those imprisoned died in prison—a terrible commentary on the state of the gaols.

²²He must needs be sentenced on his own confession, probably to be burnt at the stake.

But we do not know the whole story. It may be that someone in authority who could assure the appellor of personal safety wanted to "get at" some of those appealed, and that this charge was an outcome of a plot.

The circumstantial account of the suffering and death of the unfortunate Richard of Sowe can be duplicated over and over again in the criminal trials in England and Scotland.

²³It is not improbable that the absence of these two was made a pretext for delaying sentence on Robert, who would be held as a witness against them; and it is far from impossible that their absence was part of the plot. Robert may have been detained till the matter was forgotten and then released.

[NOTE: Since the above was written I have seen an account of this extraordinary case in W. H. Davenport Adams' "Witch, Warlock and Magician," J. W. Bouton, New York, 1889. The account is very short and is not accurate, e. g. it is said that "the trial, after several adjournments, fell to the ground." We have seen that the trial was pressed to a conclusion, but that the prisoners were acquitted.—W. R. R.]

A PSYCHIATRIC CONTRIBUTION TO THE STUDY OF DELINQUENCY¹

HERMAN M. ADLER²

CLASSIFICATION.

The subject of delinquency is one which has attracted the attention of experts in many fields from earliest times. Of late years there has been a tendency to regard delinquency as a manifestation of abnormality if not of disease. There has been considerable discussion as to whether criminology should not be taken from its close association with law and placed in more intimate relations with psychiatry. In the eyes of some, it is in itself a branch of science. Others regard it as merely a borderline science between law, medicine and economics.

While it is undoubtedly an encouraging fact that the attitude of the community towards delinquency is rapidly changing and is assuming more the position of sympathetic inquiry into the causes and remedies, it is none the less a fact that the law remains as of old,—sternly searching for the responsible parties.

The medical sciences are pushing on into this new and undiscovered field, and are outstripping their phlegmatic, more ponderous and cautious neighbor, the law. The social worker, battling in the wake of the medical man, is impatient at the law's delays, and is somewhat perplexed by the discrepancy between the medical point of view and the legal point of view. We are too apt to blame the law and to exalt science in this connection. As a matter of fact, we are forced to the conviction that the law will be changed the instant that science gives a definite basis for such change. The truth is that medicine, and psychiatry in particular, has not yet delimited the problem or discovered sufficient facts to warrant definitions of such precision that the law can note them.

At a meeting held during the winter of 1916, at the call of the Massachusetts State Board of Insanity, to discuss the problem of the defective delinquent, a great many of those present expressed the wish which is in the minds of all, that the term "defective delinquent" be defined. Dr. Walter E. Fernald, as one of the sponsors of the

¹Being Contributions of the Mass. Commission on Mental Diseases, whole No. 173 (1916.21). The former contribution 1916.20, 162 was by Helen M. Wright, entitled "Routine Mental Tests as the Proper Basis of Practical Measures in Social Service: a first study made from 30,000 cases cared for by 27 organizations in Boston and surrounding districts.

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defective delinquent law, Chapter 959, Acts of 1911, replied that the definition was not important because we all knew what we meant by the term "defective delinquent," in general, and that whatever the definition might be, the law recognized the classification, and that therefore it had become a legal rather than a medical problem.

This represents fairly the position of nearly everyone who has to deal with this subject. We all recognize the term, and in a good many instances agree in the diagnosis. We each of us, however, have our own ideas and prejudices in regard to delinquency and nobody wants to set up a hard and fast definition such as would be necessary from a legal point of view. While this is an eminently scientific attitude, it has its disadvantages in that it causes disagreements among experts in passing on specific cases, and in that it confuses the judges and other officials who have to deal with the correctional side of the problems involved.

According to the definition contained in the above-mentioned law, a defective delinquent is, first, "an individual who has committed an offense not punishable by death or imprisonment for life, but who ordinarily might be committed to a state prison, a reformatory, jail, or house of correction, to the state farm or the industrial school, a truant school, or to the custody of the State Board of Charity as mentally defective." Second, "an offender while under commitment to any of the institutions or to the Board named above, who persistently violates the regulations of the institution or the Board in whose custody the offender is, or who conducts himself or herself so indecently, or immorally, or otherwise so grossly misbehaves as to render himself or herself an unfit subject for retention in said institution or said Board, and who is mentally defective."

The two points in this definition are, in the first place, that the individual is found *mentally defective*, and, in the second place, that he *persistently* violates regulations or conducts himself in some *unusually* offensive manner. Under this law, of course, great latitude is given to the physicians who certify to the diagnosis, in that it is not definitely stated just what constitutes mental defectiveness. In the second place, the element of delinquency is not fairly defined since a persistent violation of the regulations of the institutions is made sufficient for the diagnosis. While, no doubt, this allows of sufficient liberality in interpreting the law, and in this respect is wise, it is not sufficiently definite in delimiting the classification so that in case of a difference of personal opinion it would be very hard to decide which contestant was right.

The element of defectiveness usually is interpreted on the basis of some set of intelligence tests, such as the Binet Simon, the Yerkes Bridges, or the Terman scale. Granting, for the moment, that it is possible by means of these tests to determine mental defect accurately, it is the experience of everybody that a group remains that are proved not defective by these scales, who nevertheless present the same problems in regard to delinquencies that are observed in the frankly feeble-minded. According to the defective delinquent law, as proposed, a certain amount of re-classification in the different institutions would be possible and disturbing individuals might be sent to a place especially provided for them instead of being mixed with the more tractable inmates of the schools for the feeble-minded, the state hospitals, and so forth.

No provision is made by this act for the group that are proved not defective by intelligence tests and who none the less show in many ways that they are not fully endowed.

In England, August, 1913, a law was passed which is commonly known as the "Mental Deficiency Act of 1913," and which became operative on the first of April, 1914. This act deals not only with defectives in the common understanding of the word, but also with the individual who is not defective or not insane, but, none the less, subnormal. The law, as it stands, begins with a definition of defectives which are divided into four classes:

1. *Idiots*, that is to say persons so deeply defective in mind from birth or from an early age as to be unable to guard themselves against common physical dangers.

2. *Imbeciles*, that is to say persons in whose case there exists from birth or from an early age mental defectiveness not amounting to idiocy, yet so pronounced that they are incapable of managing themselves or their affairs, or in the case of children, of being taught to do so.

3. *Feeble-minded* persons, that is to say persons in whose cases there exists from birth or from an early age mental defectiveness not amounting to imbecility, yet so pronounced that they require care, supervision and control for their own protection or for the protection of others, or in the case of children, that they by reason of such defectiveness appear to be permanently incapable of receiving proper benefit from the instruction in ordinary schools.

4. *Moral Imbeciles*, that is to say, persons who from an early age display some permanent mental defect coupled with strong vicious

or criminal propensities, on which punishment has had little or no deterrent effect."

The main contribution of this law seems to be that its definitions are sufficiently accurate for ordinary purposes, and yet make adequate allowance for the special needs of individual cases. Particularly useful is the definition of moral imbeciles, though the term is open to discussion, which calls for "strong vicious or criminal propensities, *upon which punishment has had little or no deterrent effect.*"

It is not possible to say anything in regard to the workings of the English law, since it went into force only a few months before the outbreak of the European war. It would be interesting to know how the term "mental defect" is interpreted in the application of this law, and whether the certifying physicians will require a failure to pass the Binet-Simon tests in order to allow the diagnosis of "permanent mental defect."

Kraepelin, in the 8th edition of his "Psychiatrie," introduces the term "oligophrenia" for the English "feeble-minded." He says in discussing this group, that this is an extremely varied group of disease forms showing only a single common characteristic, namely, "early disturbances of the general physis development." Kraepelin considers that these defects are caused generally by a pathological lesion affecting in some way the physical foundations. He recognizes the cause of all defects in spite of many difficulties, as trifold, namely, hereditary degeneration, an injury to the germ plasm, and acquired disease. It is interesting to observe that in the same volume Kraepelin groups the so-called moral insanity under Psychopathic Personality, and not under the oligophrenias. The main distinction lies in this point, that psychopathic personalities, which include the groups to be mentioned below, are characterized by circumscribed defect of psychic development. This contrasts psychopathic personality with oligophrenia, in that the former is a circumscribed infantilism, whereas the latter is a general or diffuse infantilism.

Kraepelin classifies the psychopathic personalities as follows:

1. EXCITABILITY (*Die Erregbaren*—KRAEPELIN).

The chief characteristic of this class is that the individuals are, as a rule, brought to the attention of the physician or to the courts as a consequence of a violent excitement, which was the result of *external* irritation. Usually, this excitement has resulted in actions which have endangered the life and health of the patient himself or of strangers or in some way endangered the public safety. After the disappearance

of the excitement, as a result of the protection and treatment of the psychiatric clinic, opportunity is given to the physicians to get an insight into the personal peculiarities of the patient. The intelligence of these individuals is, as a rule, above the average. The most prominent characteristic was naturally a strong emotional instability. Patients are easily enraged, start a brawl on trivial grounds, fall into the most violent passions with assaults upon themselves or their surroundings. The most important clues to the personalities of these individuals are rendered by the knowledge of the causes which lead to their being brought to the clinic. In 62 per cent of Kraepelin's cases, this cause was attempted suicide; 71 per cent of the women admitted were brought on that account, only 50 per cent of the men. The most frequent causes for the suicidal attempts among the men were disagreements with the wife or sweetheart, unhappy love affairs, unfaithfulness, anger and contentiousness. More rarely, the cause was unemployment, reproaches or charges, threatened punishment; occasional causes, because of the death of a child or of a sweetheart, financial difficulties of various sorts. In a number of cases the suicidal attempt was made in a state of intoxication. Also the contentiousness, unemployment, punishment, etc., were frequently associated with alcoholic indulgencies.

The causes in the women were mainly disagreements with relatives, with employers, or neighbors, disagreements with husband or sweetheart, unfaithfulness, jealousy, and so forth. In occasional cases there were criminal charges, a fear of punishment, fear of operation, the death of a relative, illness of the sweetheart, financial difficulty of various sorts.

Very frequently these attempted suicides are associated with marked histrionic characteristics. The patient attempts to commit suicide by choking herself with the hands. The patient makes minor scratches on the skin with a knife. They write touching farewell letters or meet the slightest occasion with threats of suicide. As a rule, they quickly calm down and are nearly always glad that the attempt failed. Usually they characterize their attempted suicide as "nonsense," "stupidity," even laugh over it, and declare that they will be very careful in the future not to repeat it.

Next to the suicidal attempts the most frequent causes for bringing patients to the hospital were paroxysms of rage, assaults and so on. In this class the male sex predominates. In the paroxysms of rage, the patient may attempt to injure himself or he breaks up the furniture in the surroundings, threatens the children or the members

of the family with revolvers, knives, clubs, chairs, and so forth. Very striking is often the minor nature of the existing cause which produces these unmeasured excesses. A simple correction, the denial of a small wish, a little gossip, an unwelcome order of the physician in the hospital, the mere taking of a patient to the place of detention, suffices to evoke a paroxysm of rage which increases in severity as the forms of expression take on a violent nature. Alcohol is here again often a factor which the patient may have taken previously to drown his sorrows or to strengthen his courage.

Consciousness is frequently clouded during these paroxysms. This period of excitement lasts a very short time, rarely lasting longer than a few hours. As soon as the patient has spent himself or has been removed from his environment, composure and clear consciousness rapidly return. As a rule, they are still somewhat irritable, will not eat, give information, but soon they adjust themselves to the situation, and attempt to re-establish their relations with the outer world. The recollection of the incidents is often somewhat unclear. Some patients refuse to believe the details that are told them, they attempt to put their conduct in the best light, place blame on the environment, on the relatives, and so forth.

The prognosis is on the whole favorable. Occasionally, the attempt at suicide succeeds. Many patients suffer seriously from the results of the acts of violence or from excessive use of alcoholics. The attacks of excitement may recur frequently according to the temperament and the social conditions of the patient, but, as a rule, the tendency to these attacks diminishes from the end of the 20's. A third of Kraepelin's psychopathic cases belong to this group of excitable ones. Sixty per cent of these were female. The greatest number of the cases belonged to the years between 15 and 25. After the 40th and, still more, after the 50th year, there is a rapid decline of the number of cases. The majority of the patients were single.

Kraepelin goes on to discuss the relations of this form of psychopathic personality to manic depressive insanity on the one hand, and psychoneurosis on the other. A characteristic of this class is the failure of the self-control in the face of very strong emotional influences. The excitement, however, is associated with definite external causes which passes off after a short period. Between the episodes the patient may appear quite peaceful and sociable till some particular occasion evokes a loss of temper, but, even then, when they are very contentious, they may be calmed. They do not show the

persistent spitefulness which marks permanently as a foe anyone who has seriously incurred their displeasure.

2. INSTABILITY (*Haltlose*).

The second group of psychopathic personality is characterized by the suggestibility of the will which controls the entire life course. The intelligence in most cases is good, in a fewer number it is below the average, or even poor. Some even appear to be above the average. They are usually good observers, have insight into the weakness and peculiarities of their entourage. They know how to display their talents. They have very little perseverance, and no inclination to exert themselves. They are absent minded, easily fatigued, and diverted, and therefore very rarely can follow a systematic educational course to its conclusion. They are very superficial. They easily acquire knowledge, but do not apply it in any way, and soon forget it. Memory is usually poor and untrustworthy. These patients show a remarkably active imagination. They tend to exaggerate, to embroider their narratives, to picture themselves in ideal situations, to invent stories. They imagine they are wealthy, belong to the nobility and so forth. They buy things on credit at stores under false representations. Often they seem to have no realization of the truth. One patient thought that he hypnotized himself. Of another it was said "he lies even when one is watching him." Many patients show artistic talents. They develop ideas for moving picture scenarios, write sentimental or fantastic poems, occupy themselves with the literary and dramatic problems, read a great deal—papers, books, poetry, and so on. One incorrigible tramp declared that what he demanded of life above all was the intellectual luxuries which he had so long gone without. The theater, as a rule, exerts a great attraction for these people. Some of the patients were actors or comedians, some were musicians that sang and played in restaurants.

The fundamental emotional tone often seems to be one of cheerfulness and self-confidence. The patients feel that they are destined to do great things. They want to do something better than the average. In other cases, however, the mood is depressed or at least more sober. The patients feel that they are unlucky. They have doubts as to their future. They worry about their condition in life, complain that their life is a failure, they have no luck, they are lonely and forsaken. Nothing pleases them, everything appears hard, they have no friends. They frequently threaten suicide and even plan it, rarely, however, find the courage to carry it out. As a rule, one can easily distract and

cheer up these patients. In general the emotional tone is subject to marked variations. There is great emotional irritability, which may result in violent loss of temper. An important characteristic of the conduct of these patients is their pronounced selfishness. They are, as a rule, good-natured, approachable, and even amiable, but without any deeper attachment or fellow feeling. Their personal welfare plays the most important role in their consciousness. They are not inclined to subject themselves voluntarily to privations. On the contrary, they demand comforts and the satisfaction of their often very immodest requirements, and interpret every limitation as an undeserved insult. They are very pleasure-loving.

The most severe disturbances, however, are in the region of the will. This shows itself often most markedly when the patient leaves the protection of his home. It results, in the first place, in a very apparent lack of perseverance and thoroughness in work. They usually begin to work with great enthusiasm, but soon lose interest, become distracted, and absent-minded, and commit gross errors and negligence. One says of such a patient "he was very useful when he wanted to be." "A painter made only sketches without ever finishing a picture."

The patients may also suffer from hypochondriacal troubles, which interfere with their self-support. These patients are very much worried about their health, easily feel ill, perspire freely, have headaches, extreme prostration after they are beginning to work. This instability becomes a very serious portent for the patients. They lose their positions. Under suitable guardianship they are able to live a life free from grosser disturbances, although they are, on the whole, weak and inadequate in their work. They fill in their spare time with loafing, with recreation without previous fatigue, with cures without sickness, and so on. They are, further, extremely open to bad influences, and are ever ready to descend into bad company. They soon get involved in gambling, fast living, and so forth. A very bad influence in this condition is exerted by alcohol. Of Kraepelin's male patients, 64 per cent became alcoholic, of the females 20 per cent. The alcohol increases their irritability, reduces still further their weak will, and destroys often the last remnant of ability to work. Occasionally the picture of pseudo-dipsomania is developed. The patient will be sober for months, and then, on an occasion when his weak will is overpowered, will commence to drink inordinately, and will not stop till he is profoundly intoxicated or his means gives out. In this case, it is not a repression which drives the patient to alcohol, but a perfectly

accidental occasion such as the meeting of a friend or a farewell feast or the like. Therefore one cannot speak of a periodic relapse in these cases. On the contrary, it is external circumstances which are the decisive factors. Furthermore, the patient does not become excited as a result of alcohol, but merely intoxicated.

An important place in the life of these patients also is sex. These people are usually sexually very active, and under the influence of their emotions, strengthened by alcohol, are guilty of the most shameless excesses. The inability of these patients to resist temptations from without induces the patients to live far beyond their means. They acquire expensive habits, drink champagne, buy unnecessary articles, treat their friends, give magnificent presents to women, and so on. They soon get into financial difficulties, sell or pawn their own or other people's valuables, and thoughtlessly make debts.

A large percentage of these patients—54 per cent of the men, and perhaps 33 per cent of the women—become involved in difficulties with the law in the course of their gradual downward career. In the case of the men, the delinquencies are usually theft. Next in frequency, swindling and forgery. In other words, these are delinquencies which are favored by want and opportunity. Considerably rarer are begging and assault, vagabondage and counterfeiting and so forth. One sees, however, that the criminology of these patients is brought out by their economic incapacities. The principal delinquency in the case of women is prostitution. Almost as frequent, however, is theft, then again swindling. The influence of alcohol can be recognized in all these instances in addition to the social and economic deterioration. The patients themselves are aware of this gradual demoralization. Occasionally, it is true, they assume the attitude of indifference, make no attempt to pull themselves out of the difficulty. As a rule, however, they sense, at least occasionally, the true significance of their condition and evince regret or they repent, and make good resolutions for the future. They may even make an attempt at carrying out these resolutions, but soon give it up and succumb to the first accidental temptation. Very frequently, these patients decide on suicide. A close examination of these attempts shows that the occasion for the suicide was of trivial character. A large number of those took place under the influence of alcohol. The method employed in most of these cases is, strange to say, the same in men and women, namely, poison, probably because in this case, we are dealing with individuals with weak will who are disinclined to action. Most of these attempts are carried out in a

superficial, inadequate, often silly manner, and are usually not successful.

A certain group of these cases, especially in women, show some of the symptoms of hysteria. Physically, these patients show a tremor, stigmata of degeneration, increased reflexes, headaches, insomnia, gastric neuroses, and so forth. In another series of cases, an increased sensitiveness to alcohol is noted.

The prognosis is rather serious. It is this group which furnishes the members of the so-called asocial group—tramps, criminals, and prostitutes. Under careful guardianship and strict discipline, the easily influenced will may be protected from evil influence. As soon as these patients are left to themselves, however, their ominous tendencies easily gain the mastery, and start the individual on the downward path. Alcoholism which soon becomes incurable, as a rule, seals their fate.

This group of cases forms a little more than one-fifth of the psychopathic cases admitted to the Kraepelin clinic. In this case, the women form a little more than a third in contra-distinction to the excitable ones.

In regard to the age of onset of this trouble, the men and the women differ somewhat. The women reach the highest number immediately after leaving the protection of the family or the school, that is between the 15th and the 20th year. From then on, there is a constant diminution, which makes the female sex, practically, disappear from the table, after the 30th to 35th year. This may be due to the fact that most of the permanently deteriorated individuals gradually succumb to prostitution or the minor crimes. Also those that do manage to marry or otherwise find maintenance, are sufficiently protected to prevent the most serious difficulties.

The male patients show smaller numbers than the females between the 15th and 20th year. After that, however, the number remains larger than that of the women and reaches its maximum between the 25th and the 30th year. It shows principally that there are causes at work which even after the full growth has been attained, tend to weaken the will and self control. There is another factor, however, which counteracts the natural maturity and which increases the number of those that have gotten into difficulties on account of their instability, namely, alcohol. Here again it seems that this is a difficulty experienced mostly by unmarried individuals. Little can be said in the case of both of these groups as regards the heredity element—the material at hand being insufficient to draw conclusions.

The picture just drawn, thus makes it clear that we are dealing

with the manifestations of a psychic immaturity. It would seem that a true treatment is excluded from the beginning. The possibilities of education and training depend entirely upon the severity of the disturbance in the individual cases. Of course, the most important thing is to protect them from alcohol. This is extremely difficult under the existing conditions.

3. PSYCHOPATHIC TREND (*Triebmenschen*).

This is a tentative group of psychopathic personalities which have the common characteristic that their conduct is controlled by spasmodic will impulses. Whereas the resolutions of a healthy person especially those which have a broad significance, result from balancing reasons and counter reasons, in these cases one finds a very large proportion of the will impulses originates in tendencies which bob up from the unconscious or the subconscious and which press for outlet.

Again, the intelligence of these patients is as a rule good, though occasionally not good, but in some instances even excellent. There may be even talents or aesthetic appreciation of music, theatre, and so forth. Most of these patients show a certain amount of intellectual activity and artisticness, converse well, have good ideas, express themselves skilfully, are good at repartee, make witty remarks. Sometimes they complain of distractibility and increased fatigability. These patients have almost regularly a very good opinion of themselves. They are very vain, arrogant, think that they are born to a better sphere than they find themselves in, are special people, are sure of a great future, are boastful and so forth. They are not particular about the truth. They have from early youth a decided tendency to embroider their remarks, to invent, to lie. They often are not conscious of the tendency to this falsification of actualities.

Emotionally, these patients are good-natured, sociable, and cheerful. Some are ecstatic, others opinionated, some inconsiderate of others, arrogant and contentious, and present great difficulties to their teachers. On the whole, they appear optimistic and self-confident, but frequently this is subject to marked variations. Occasionally one finds these patients in a depressed or unhappy frame of mind, even in despair. At other times they are irritable, sulky, sensitive, easily wounded, complaining. A large number of these patients express their dissatisfaction with life by means of true suicidal attempts. There are frequent outbursts of temper. Very frequently from time to time there are emotional depressions without any adequate cause. During these the patients become reserved, are silent and feel disgusted

about everything. It is just these depressions which form the starting point for all sorts of impulsive acts. Occasionally one observes here also instances of groundless fear.

The most severe disturbances are noted in the actions and conduct. These are influenced in the highest degree by the spasmodic will impulses which throw overboard all sensible intentions and plans.

There are three principal forms of these impulsive ones: the profligate, the truant, and the periodical drinker. It is possible that there are a series of other forms of psychopathic personality that belong here.

In the first subgroup, that of the profligate, the most marked characteristic is the strong tendency to unlimited squandering. The natural result of the sort of life these people lead is an accumulation of enormous debts. A very unfavorable influence on the fate of these patients is exerted by lack of perseverance. They can endure nothing very long, they change their positions or their occupation, often without any cause, wander restlessly from one place to another, make plans upon plans without actually carrying them out.

The patients as a rule show little insight into the peculiarities of their conduct. They do not understand how they could have done these things, or they blame their relatives, neighbors, and so forth. Again alcohol plays an important role in these cases.

The second group of these patients shows the instability principally in its tendency to aimless wandering. In one group of cases, the impulse to go away appears quite without warning. The patient suddenly gets an idea he must go to Trieste, Hamburg, Vienna, Paris, occasionally in connection with some pathological depression or anger. Sometimes the accidental possession of a large sum of money may be the cause of this. As soon as they feel the impulse, they proceed to act. The patients disappear, wander and travel about, here, there and everywhere, according to their whim. At times they are weeks and months in foreign lands. These impulses recur sooner or later, often within a few weeks or months. The patient is at no time able to resist these impulses. The age at which this occurs most frequently is between the 10th and 15th year. It has been observed in the third year.^{*} This occurs chiefly in the male sex. This group, however, is not a uniform one. Aside from the epileptic and hysterical cases there are a number of individuals who wander because of their lack of family sense, their desire for adventure and so forth.

^{*}Stier, *Wandertrieb und pathologisches Fortlaufen bei Kindern*, 1913.

There is a subgroup of cases here in which the unquenchable desire to wander into the world becomes a permanent personal peculiarity. These patients nowhere find rest, and they form the tramp type that is known in all countries.

There is a group known as "Orientkunden," Orient tramps. These are people who are attracted to the Orient on account of the ease with which they are able to live there without steady employment, and the freedom from closer supervision of the Western civilization. These people find it difficult, if not impossible, ever to return to the well-regulated conditions of European civilization.

The third group under this heading includes individuals who periodically consume enormous quantities of alcohol. This attack apparently is in close connection with depressions which appear without any apparent cause. The patients are irritable, disgusted with their lives, with their surroundings, feel compelled to do anything that will free them from this state of mind. They disappear, wander about, and start to drink inordinately. Occasionally such a patient may come to the hospital in order to forestall the excesses. In the interval between the attacks the patients are usually very sober and temperate. Frequently, however, they finally become chronic alcoholics. Usually they show a number of other psychopathic traits—moodiness, lack of endurance, and so forth. Since these patients usually have average intelligence, they may have good insight into their short comings. This group of impulsive individuals included about two or three per cent of the psychopathic subjects entering the Munich clinic. Practically all were men. The main characteristic of these psychopathic conditions lies in the overpowering of the normally regulated will and intelligence by spasmodic impulses. In co-operation of the various tendencies that strengthen the will, those attain unusual power which arise in the general moods and vital desires of the individual as opposed to those guiding and inhibiting impulses which ordinarily control them and which are the result of training and experience. One of the fundamental dispositions which give rise to impulsive tendencies is above all the desire to dominate in a purely external fashion. A direct result of this is the tendency to boast, to lie, to squander money, in so far as an impression is made thereby. The second important vital demand is a life of pleasure. Somewhat harder to explain is the restlessness which underlies the tendency towards vagrancy and dipsomania. Even normal healthy people are familiar with the desire to change their environment after a period of routine and confining duties. Probably a good part of the attraction

of novelty depends upon the stimulus towards new thoughts and actions and freedom from tiresome routine. Thus one might speak, as the fundamental cause of the restlessness of the individuals, of a sort of demand for liberty. It seems that this may be the same instinct which causes animals to wander about, and which makes captivity so unbearable to the wild animals. This has been overcome by laborious domestication, and in man by the development of the social sense.

4. THE ECCENTRICS.

A small group of psychopaths whose clinical definition is still very doubtful is the group of eccentrics. They include the *pathological liar and swindler* (the "pseudologica phantastica" of Delbrück), which is characterized in the main by an increased mobility of the fantasy and irregularity and aimlessness of the will.

5. THE ANTI-SOCIAL INDIVIDUALS.

The anti-social individuals are included in a group that has adequate intelligence, but has a certain dullness of perception in regard to social customs. They are disinclined to work, are lazy, untruthful, irritable, vain, self-satisfied, and most important of all, are incapable of any deep emotion. Another important accompaniment in these states is a lack of sympathy for others. The sexual desires of these people are awakened early and lead to all kinds of delinquencies. Petty larceny is a frequent accompaniment. Of very serious import to these patients is the tendency to the recurrence of their delinquencies, in spite of warnings and unpleasant experiences.

The prognosis in these cases is doubtful, but by no means always unfavorable. A very significant experience with them is that a number of criminals of this group later on developed mental disease, which ended in marked deterioration—especially prominent in these cases was the paranoid form of dementia praecox. The greatest number of these people were unmarried, and about one-fifth were alcoholics. A further number of cases showed active syphilis. Most of these people showed various stigmata of degeneration, cranial deformities, squinting, speech defect, and so forth.

Kraepelin proceeds to discuss the relation of the milieu or outer environment to the formation of anti-social personality, and comes to the conclusion that while it has unquestionably some effect, it is not clear that this need necessarily be an important one, since heredity can always be shown to play a role in these cases. It is impossible in the present state of science, according to Kraepelin, to answer all the questions that have been raised in this connection. One thing may be

deduced, and that is that this inability to adapt oneself to the demands of human society is the result of an impoverished emotional life.

This congenial lack of proper emotional reactions is generally called moral insanity (Prichard, 1835), or the "folie raisonnée" of the French. The treatment of these patients must begin so far as possible in early childhood by means of education. Prolonged good effects can be hoped for only in those cases in which no pronounced criminal tendencies exist.

6. CONTENTIOUS INDIVIDUALS.

The intelligence of the contentious individuals is usually moderate though not subnormal. There is an increased emotional irritability and increased egoism. This also is an unclear group, midway between one of the previously mentioned ones and the *Querulantenwahn* (litigation psychosis).

So much for the classification and description of this class of cases as given by Kraepelin.

It is clear that we are dealing with a group of individuals who are so nearly normal that it is only in the course of years and by the effect of cumulative evidence that they appear in any way different from the average.

There are two main factors to be considered. The one is the intelligence of the individual, his ability consciously and logically to direct his conduct. The other is the emotions. Whatever the peculiarities of the individual, whatever his special experiences in the main, these two factors can be distinguished in his activities.

The former is commonly supposed to be the highest attribute of the mind, to have been acquired at a late stage in the development of the species. The latter is of fundamental significance for the organism, and has developed out of the instincts. Both factors exist in every individual and practically never operate independently.

In health, the two are well integrated. The emotional impulses, the temperamental tendencies, or, to use the word of the biologist, the tropisms, exert often opposing tendencies towards each other and towards the guiding intelligence. There is therefore a very marked distinction between the action of the tropism and that of the intelligence, namely, that the former exercises an episodic effect, whereas the latter is more or less continuous.

William James says that "bodily changes follow directly the perception of the exciting fact, and our feeling of the same changes as they occur is the emotion." "Objects excite bodily changes—the

changes are so indefinitely numerous and subtle that the entire organism may be called a sounding board." "Every one of the bodily changes, whatsoever it be, is felt acutely or obscurely the moment it occurs." "If we fancy some strong emotion, and then try to abstract from our consciousness of it all feelings of its bodily symptoms, we find ourselves with nothing left behind."⁴

Cannon has recently brought supporting evidence for this theory in his work in connection between the internal secretions and emotions of pain, hunger, fear and rage.⁵

Granting then that the emotions are transitory and intense, that they are associated with strong physical effects which are felt by the individual, that they create corresponding memories and thus lead easily to habits of many sorts, it would seem that in the analysis of individuals, normal or pathological, a consideration of these factors must come first.

It is manifestly impossible to analyze human nature at all adequately in the present state of our knowledge. It also seems probable that many generations of men must pass before this can be done with such a degree of accuracy that scientific prediction may be possible. This is a situation not unfamiliar to other branches of medicine. Some analogies pertinent to the present inquiry may be made with the study of immunity. Some twenty years ago, the immunologists found themselves confronted with a very similar dilemma.

When Ehrlich first proposed his side-chain theory, he suggested that it might be a long time before chemistry would be able to explain the phenomena of immunization as evidently must be done if we are to have an accurate, scientific knowledge of the subject. Assuming symbols for unknown chemical entities, Ehrlich and his school worked out a complex system of immunology which has served its purpose most satisfactorily and has advanced the knowledge of the subject beyond all hopes, although in the meantime, chemistry has done very little to increase our definite knowledge of the specific substances involved in these reactions.

Similarly, it will take the psychologists, the neuro-pathologists, and the physiologists a long time to work out accurate explanations of the recognized phenomena. The painstaking psychological analysis of the individual cases by time-consuming methods is thus placed in a position similar to chemical analysis of immune bodies. Upon improvement along these well-organized lines depends probably the future

⁴James, *Psychology*, Vol. 2, p. 446.

⁵Cannon, Walter B., *The Emotions of Pain, Hunger, Fear and Rage*.

of this field as well as every other biological problem. In the meantime, we need methods which will enable us to deal with the increasing numbers of subjects that come under our professional care, or that perplex the law courts and the schools.

In this sense, I propose to classify the individuals that present mental or social difficulties in three groups. These groups are understood to be meant as symbols for unknown quantities rather than as explanations or precise definitions. The three groups are, in the first place, the group in which the intelligence is found to be below the lowest normal level. This is called the group of *defectives*, or the *inadequate*. Into this group fall the feeble-minded, the "Oligophrenias" of Kraepelin, the end stages of dementia praecox, and of other deteriorating psychoses; of presenile, organic dementia, and so forth.

The next group, *emotionally unstable*, includes individuals who have average intelligence or better, but who show in their conduct and in their careers the predominating influence of the emotions. They are moody, changeable, impulsive, and in general it may be said that their conduct itself does not correspond to their beliefs, or intentions.

The third group, the *paranoid*, includes individuals of average intelligence or better in whose careers the emotional influences are of secondary importance, but whose main difficulties are a result of mistakes in logical thought processes. The well-known characteristics which are exhibited in extreme form by the paranoid psychoses, these individuals show often to a degree which falls just short of a delusional state, egocentric ideas, and prejudices. Everything that occurs about them is referred to themselves. Their first reaction is to determine what effect any extraneous circumstance may have upon themselves. They are selfish, vain and arrogant. If they feel in optimistic mood, they are contemptuous of others. If depressed, they are resentful. Though this is a trait of the intellect, it does not necessarily interfere with their intellectual abilities, and these people are often very efficient.

These three groups can be separated only theoretically. There are many cases that are composite, so that their characteristics fall into two or into all of these groups. Thus, few paranoid individuals go through life without strong emotional reactions which often lead to social difficulties. Similarly, the emotionally unstable will, especially during paroxysms of rage or depression, often exhibit paranoid symptoms. The defective group may show paranoid tendencies and emotional instability.

The distinction lies rather in the behaviour of the individual as observed in the course of years than in a definite quantitative difference to be observed at a single examination. The introspective psychologist will attempt to determine in each individual by psychoanalysis or other means what the mechanism of the disturbance is. He may succeed in doing this, and still be unable to predict the future course of the individual.

The behaviourist psychologist will not lay too much weight on the results of a single examination by whatever method, but will lay more emphasis upon the history of the case, and the previous experiences of the individual and, above all, upon the reaction of the individual to certain test situations during a period of observation.

This behaviourist method offers the hope of a short cut in dealing with these individuals.

An examination of a hundred cases of unemployment⁶ made at the Psychopathic Hospital gave the following interesting results. These one hundred unselected cases consisted of men between the ages of 25 and 55, who had been admitted to the Psychopathic Hospital in the usual way for examination as to sanity or for treatment, and the following observations were made:

Of these one hundred cases, forty-three were classified as paranoid, thirty-five as defective, twenty-two as emotionally unstable. The paranoid and the defective groups, therefore, form 78 per cent of the cases which fits well with the generalization that the emotionally unstable on the whole are well liked and popular with their fellows, that the paranoid cases, on the other hand, are usually very unpopular.

The number of different jobs held by the individuals arranged in groups are as follows: The total number of jobs of these hundred men were two hundred and seventy-eight during the five years previous to admission. Of these, the paranoid individuals had one hundred and thirty-four, or an average of 3.1 jobs per patient. The defective had ninety-five, an average of 2.7 jobs. The emotionally unstable had forty-nine jobs, an average of 2.2. This shows that the paranoid individuals changed their employment oftener, almost twice as often, as the emotionally unstable.

The months employed showed the same relation. Paranoid individuals averaged 20.6 months for each job. The defective averaged 24.3 months, while the emotionally unstable averaged 50 months for each job.

⁶Journal of Mental Hygiene, Vol. I, No. 1, January 1917.

It will be seen from this, as well as from the descriptions given by Kraepelin, which are corroborated by most of those who have had experience with the social problems connected with mental disease, that there is one important difference between the careers of these people and those of average healthy persons. This is, namely, an apparent inability of the delinquent to learn by experience. This fact is taken note of particularly in the English mental deficiency law, and seems an important point to consider in every case.

When Ehrlich devised his side-chain theory, he borrowed a generalization from Weigert. The latter had observed in his pathological studies that when the body is injured in such a way that complete disintegration does not result, the reaction is an over-production of defense by repair. Thus, a fractured bone, when it knits, will produce a union which is stronger than the original bone on account of an increase of callous formation. The same is true in the repair of other tissues. Ehrlich made use of this law which he called Weigert's law, in explaining the reaction of immunity thus: If toxic substances are introduced into the organism in amounts not sufficient to kill, the individual reacts by an over-production of defenses, in other words, by becoming immune.

One might apply this to the formation of habits—good or bad—to the acquisition of emotional control in delinquents. If the individual is exposed to conditions which are not enough to disable him permanently, he should react by an over-production of defenses. This is implied by the popular proverb, "The burnt child dreads the fire." The defective delinquent in this sense might be termed a burnt child that does not dread the fire: the mere burning with all its unpleasant experiences is not sufficient to create the defense habits which will prevent its recurrence.

The thresholds for these reactions must lie at different levels in different individuals. This is a point for analysis in each case. Undoubtedly, there are individuals so far deviated from the average, that practically no amount of experience, even under the most careful guidance, will produce resistance.

For the purpose of testing some of these deductions a second series of one hundred unselected cases was gathered. These cases were taken in the order of their admission to the hospital, excepting only those that presented no definite social problem. They included both men and women. In each of these cases a thorough mental and physical examination was made, and a psychological examination to

determine feeble-mindedness, and a more or less thorough social examination to determine their difficulties in the community.

While all of these one hundred cases had been investigated by the social service department, it was not possible to obtain sufficient information about all of them to enable us to classify in the above manner each case studied. There was, however, sufficient information at hand to enable us to classify forty-five of these one hundred cases as follows: Sixteen as inadequate, three as unstable, thirteen as paranoid, and eight as mixed.

The unstable group, unfortunately, turns out to be too small to be of much use, and the different combinations in the mixed form are too varied to allow of any correlations. Contrasting the inadequate group with the paranoid group, we find seventeen cases of delinquency in the former and thirty-nine in the latter, or an average of one delinquency to each individual of the inadequate group as compared with three delinquencies to each individual of the paranoid group. The social difficulties of the inadequate group are scattered through a series of delinquencies such as alcohol, sex, lying, swindling, contentiousness, emotional outbursts, and suicidal attempts. In the paranoid group contentiousness and attempted suicides make up one-half of the social difficulties.

An attempt was also made to gain some information as to the careers of the individuals in regard to the three points: (1) Whether the social condition had improved, (2) whether it had remained the same, (3) whether it had become worse. The inadequacy group were fairly evenly divided in these three respects. Six cases had improved socially, three had remained the same, and seven had become worse. In the paranoid group, four had improved, two had remained the same, and seven had become worse.

It is, of course, quite obvious from this statement that these figures cannot be taken as more than an indication of what a study of this sort if carried consistently through a number of years might show. None the less, while merely straws indicating which way the wind blows, they are sufficiently suggestive to justify the conclusion that in the psychiatric analysis of delinquency, the emphasis should not be placed upon the delinquency, but upon the delinquent.

On account of the attitude that the law takes in this regard, delinquents are classified usually without much thought according to their delinquencies. If this analysis does nothing more, it at least serves to show that such a classification is not only of no use to one

interested in the therapeutics of this problem, but that it is based upon false assumptions.

The dramatization of a social incident which might have far reaching influence upon the future career of an individual is of great human interest, but after all, of minor psychiatric importance. A person who, in a fit of rage picks up an object and hurls it at another, might find himself merely jeered at by his neighbors if the missile falls short, or may be subjected to a fine in court for breaking a plate glass window, or he may find himself charged with manslaughter or attempted homicide. Each of these criminal charges has an entirely different importance in the eyes of the law. To the psychiatrist they are the results of the same cause. If such an individual is to be classified by his delinquency he might find himself at one time a disturber of the peace, at another time a murderer.

Furthermore, just as the individual might commit different sorts of crime, so the same crime might be committed by individuals belonging to entirely different types. It is important, therefore, to be as objective as possible towards what I have above called the dramatization of the incident, to what the newspaper men would call the "news value" of the story, in short, to all those sides of the incident which we have been taught to appreciate by writers of literature and to lay emphasis not so much upon *what* act was done as upon *what sort of act* was done.

In every given case of delinquency or social difficulty it should be determined whether the difficulty is chiefly due to inadequate intelligence, to emotional instability or to paranoid disposition. Nothing can be gained by endeavoring to increase the intelligence of a mental defective. Nothing can be expected from an attempt to change the personality of the paranoid individual. A great deal can be accomplished, however, in controlling the emotional instability of those whose chief difficulty is the result of such instability, as well as the emotional difficulties of the paranoid and defective group.

Classification such as the one suggested in this communication is, of course, entirely too simple to completely satisfy all the demands in the individual cases, and it is to be hoped that this classification may be altered and amplified, or perhaps completely reconstructed till finally a working method may result, but even now, without general information of the subject, such a simple scheme as this one proposed, has served not only to keep the ideas of the examiner grouped in orderly fashion, and thus to prevent disorderly and unclear thinking on his

part, but it has actually appeared to be of benefit when it was applied as a basis of therapy in these cases.

It would seem that by careful training based on an analysis of each individual—especially from the behaviourist's point of view, considering the past life and career rather than the self-explanatory, subjective statements—it should be possible to influence the future conduct of these individuals. While their fundamental equipment cannot be changed any more than that of the other two groups, these people suffer more from the effects of their conduct than from their subjective attitude towards themselves or their environment.

Thus, as Kraepelin points out, alcohol is an important factor in producing the final downfall. Extravagance, profligacy, sex excesses, bad companionship, and so forth, are the factors which combine to cause the social difficulties. The suggestibility of these individuals, their intelligence and insight, which is usually quite adequate for their needs, can be made use of in acquiring and strengthening the habits which the individual would never be able to gain if left to himself.

What is desired, therefore, is a system of mental and emotional exercises for the purpose of habit formation. This might be designated as *orthopsychics*. This term is further applicable in that a good many of those cases are instances not of disease in the sense of an acquired, deteriorating process, but rather comparable to physical deformities. For the present, our experiences in orthopsychics, is limited. We have had a few cases in which, after a preliminary survey at the Psychopathic Hospital, a course of training has been applied, which has consisted above all in arousing the interests and appealing to the pleasure-loving side of the individual. It is a well known fact, for instance, in dealing with wayward young people that even under the most advantageous circumstances and even with the most favorable and friendly environment, the individuals do not do well. This appears to be due to the fact that the emotional impulses are of short duration and leave no strong impression behind them. Therefore, when the novelty of a situation has worn off, there is nothing to hold the interests of the delinquent and tide over the tedious days of monotonous routine.

We have proposed in a number of cases (and have carried it out to some extent in a few) to arrange to change the environment of each individual before the novelty has quite worn off. The length of time in which an individual stays in each home varies in each instance, and must be determined carefully each time. We are all so

prejudiced by our early ethical training that it is difficult to be perfectly objective in dealing with these people. It is hard to eliminate pedagogic and purely academic demands for that which we consider right. None the less, this must be done, and in every instance, in every disagreement, at every change in the routine of the individual, emphasis must be laid on the fact that it is done from a medical point of view, that is, from a point of view of therapy and help, with kindly feelings toward the patient, and never as a corrective or as a punishment, and above all, never vindictively.

This plan has succeeded in a number of non-institutional cases, which were rather better off than the institutional cases, because of the fact that the financial condition of these individuals permitted an adequate provision for their care. The state at present makes no allowance for this sort of therapy, and even experimental work which is as yet hardly to be ventured, requires funds which are at present entirely lacking.

Education and training, therefore, rather than punishment are the methods that hold out a chance of success. These individuals are not able to learn by experience. They receive the equivalents of punishment in their daily life, which are sufficient to influence the formation of adequate resistance in a normal individual. In these individuals, while they often recognize the full significance of those circumstances in which their delinquencies placed them, their experiences have no corrective influence.

To punish such an individual, therefore, is to increase his defeat rather than to strengthen his defenses. It is like administering alcohol to the patient suffering from delirium tremens. It is like injecting diphtheria toxin into the circulation of a patient suffering from diphtheria. We may draw a final analogy from immunology in applying this therapy:

The first duty is protection against the immediate effects of the acute attack. In our cases, this means freeing them from their immediate difficulties, supplying them with food and lodging, helping them to recover from alcohol and drug intoxication, relieving their physical symptoms, curing them of venereal disease, and building up their physical health.

In the second place, immunization: This is often in the nature of after care, and cannot be achieved at once, but can be accomplished by a building up of the defense habits, by training, and not by overwhelming an already breaking organism with the hostile conditions, but by gradually strengthening their habits so that they will meet the

particular unfavorable conditions without fear of breakdown. In the group of emotionally unstable, this offers great hope. In the paranoid and defective groups, at least, a palliative effect may be hoped for.

At present, the practice is to attend more or less thoroughly to the first of these requirements, that is, relieving the patient's immediate needs. When the after effects have disappeared and the patient once more seems normal, he is sent out into the world, in most cases, merely to repeat the offense that brought him under observation in the first place. Here, where treatment ordinarily leaves off, is where the special and most important part of the therapeutic effort should begin. And in this respect the penal institutions no less than the hospitals for psychopathic cases must assume responsibility.

I wish to express my indebtedness to Miss Helen M. Anderson of the Social Service Department of the Psychopathic Hospital at Boston, for valuable help in making the tables, in gathering the social information about the cases tabulated, and in trying out some of the deductions in selected cases.

LOAN SHARKS AND LOAN SHARK LEGISLATION IN ILLINOIS

EARLE EDWARD EUBANK¹

The question of usury is by no means a new one. It is almost as old as the human race; certainly as old as any financial system. In earlier periods of history, *interest*, payment for the use of money, and *usury*, payment in excess of the rate allowed by law, were used as synonymous terms, and any attempt to extract a fee for the use of a loan was looked upon as immoral. Solon, archon of ancient Athens, forbade it by law, a position which Socrates and Plato later endorsed on ethical grounds. In mediæval England, as late as the thirteenth century, Parliament made all payments for the use of money illegal.

The impracticability of doing away with interest entirely by means of legislation has been commonly apparent, however, wherever attempted, and legislative bodies have for the most part given consideration to the question of the establishment and enforcement of fair and practical rates for loans rather than to measures for their complete suppression. That this question should be, as it is, one of universal interest is in itself indicative of the abuses to which the borrower everywhere has been subjected during many generations by the unscrupulous money lender.

In practically every city and large town in the United States today men exist who make a business of exploiting the financial extremity—actual or imagined—of individuals who are unable or unwilling to utilize the ordinary channels for securing money. These persons, professional money lenders, use the urgent necessity of their patrons to exact from them in illegal ways usurious rates of interest, extortionate fees and special charges, mounting up in some cases to hundreds of per cent a year. They have, in many instances as organized companies, built up a systematic technique of business, none the less effective because contrary to law. Elaborate devices for holding old trade and securing new, reprehensible ways of collecting illegal charges, skillful processes for evading the law—these are worked out with consummate skill.

To this class of money lenders popular speech has applied the descriptive term "loan shark," an unmistakable phrase which has found a place for itself in our common language.

Chicago has been the happy hunting ground of the usurer for

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many years. Not only is business here exceptionally good, but the law has been such that an operator could carry on his transactions without personal risk.

While the loan shark situation has long been generally known to be bad, no definite statement as to its extent and organization was possible up to a few months ago. Between June and November, 1916, the Department of Public Welfare of the city of Chicago undertook to make a survey of the situation in order that it might present a concrete array of facts concerning the activities of the loan shark in the city which would open the eyes of the community to the methods by which the business was being carried on, and its enormous volume. It was hoped that the information thus secured might serve as a basis for constructive measures dealing with the situation. So questionable an occupation does not seek publicity, and considerable time and patience were required in getting at the facts. Altogether the names and addresses of 229 definite concerns, 139 of which were actually engaged in business November 1st, 1916, were secured. Specific cases of extortion with verifiable details are on file against 199 of the number, and against the others there is conclusive circumstantial evidence. How many firms or individuals escaped detection there is no way of telling.

Of the concerns observed the rate of interest (whether in the form of a bona fide interest charge, or cloaked under the name of "fee" for service, extension or renewal) ranged from ten per cent to forty per cent a month. In occasional instances the rate was even higher. The volume of business ranged from \$40,000 per year in the smaller concerns up to \$300,000 in the larger, the average being about \$85,000 per year, or more than eleven million dollars annually in Chicago alone in the hands of the 139 companies in active business when the report was published.

A cardinal principle of the loan shark business is that it shall be carried on with as little conspicuousness as possible. Numbers of designations are employed with the intent of concealing the true character of the concern. Professional usurers are found in the Telephone Directory under all of the following classifications: Telephone Directory under all of the following classifications: Investments and Securities, Real Estate, Coal Dealers, Lawyers, Tailors, Banks, Manufacturers' Agents, Collections.

The loan shark "clearing house" has its headquarters in an office on Dearborn street, but the glass door is devoid of any business insignia whatsoever. "Commercial paper" is a designation on the office

door and the business stationery of one concern. Among the ones most difficult to reach, and most harmful, are those which pose as banks and use such descriptive terms as "United States," "Peoples," "Illinois," "Federal," "State," in connection with them, to give the impression that they are doing a regular banking business, or are in some way connected with the government.

Comparatively few loan shark companies are incorporated, partly because incorporation would necessitate keeping indefinitely the name which is written into the charter. This would be exceedingly inconvenient for some of them who make it a practice to change names from time to time as one grows too unpopular.

The complete list of 229 names and addresses of money-lenders was sent by the Department of Public Welfare to the Secretary of State of Illinois with a request that his office should indicate which of them had been incorporated, together with the date and purpose for which they were chartered. Of the 229 only eighteen were found that had been chartered in Illinois at any time, and of the eighteen, nine had already been cancelled, in most cases for failure to file an annual report as required by law.

The purpose of incorporation where specified is worthy of note. The exact language of a number of charters follows as it was found in several illustrative cases:

1. "To conduct a general lunch-counter, restaurant and hotel business and to do and perform all the necessary business incident thereto."

2. "For the examination of titles to real and personal estate, to furnish information upon which to base credits, to transact a general collection business."

3. "For the manufacturing and sale of dry goods."

4. For the purpose of "carrying on the business of buying and selling bonds and other securities."

5. "To manufacture and deal in furniture, stoves, rugs, and all kinds of household properties."

6. "For the purpose of raising, harvesting and dealing in leaf tobacco; to purchase and own real estate in connection with said business, and to transact any legitimate business coming within the province of this corporation as regards the purchase and sale of personal property."

7. For the purpose of "purchasing and presenting plays in carrying on the theatrical business."

Definitely chartered for such objectives as the foregoing, various

loan firms freely use the term "incorporated" upon their printed matter, conveying the impression that they have been incorporated for loan purposes particularly. As a matter of fact not a single one of the charters which were recorded by the Secretary of State carries within it any provision for doing a money lending business.

Not one in twenty, as the report of the Secretary of State shows, is incorporated. The business is too shiftty to desire the permanence and fixity of name which incorporation would give. Change of name is resorted to frequently because of the unpleasant connections which associate with it after it has been running awhile. This gives it a mushroom-like character and complicates investigation. Circulars appear every two or three weeks advising the public that a "new" company has begun business at such and such an address. As a matter of fact the only new thing about the company is the name. The management and capital and outstanding claims of some company that has "gone out of business" merely take up a new designation and continue the even tenor of their way.

The success of the money-lending business, as that of any other that requires a market, depends upon its ability to get its offerings effectively before the public. The columns of the daily papers afford the best medium for this and they were extensively used in Chicago so long as they were open to loan shark advertising. With one or two exceptions this privilege has been withdrawn by the Chicago press and other forms of advertising have had to be developed. Literature is distributed freely through the residence sections of the city; personal solicitors are at work, the agent sometimes being a debtor himself who obtains a reduction in his account as a commission for drumming up new trade. Still another method of getting in touch with prospects is that of exchanging names with other money-lenders, the names exchanges being those of former customers who have ceased to be profitable to the original firm.

The essence of the power of the loan shark over his victim in Chicago as elsewhere is in the victim's ignorance. Ignorance, due first to carelessness in many instances of the obligations which he signs when he receives his loan; second, ignorance as to what his rights really are under the law; third, ignorance as to the means of redress which are available after he has discovered the plight in which he is. With reference to the first of these the loan shark system has worked out an elaborate set of forms, guarantees and assignments, which the borrower is required to sign before he can get the money. Usually he does not read the papers signed, and if he should he would

not dare protest, for he wants the money and he is made to feel all the while that the lender is doing him a personal favor by letting him have it, and therefore he must not ask too many questions. He may or may not know it, but he has probably signed all of the following papers: First, notes for the money borrowed (separate notes for the principal and interest, so that in case that he should subsequently discover his rights and protest against the interest, the note for the principal will appear as a separate item); second, an assignment of his wages to the lender (in case of the salary loan shark) to be drawn on in case he fails to pay up; third, usually a further security in the form of a mortgage on his household effects; and fourth, a power of attorney to be vested in the loan shark himself. No copies of these are given to the borrower, so he has no way thereafter of proving what he has or has not signed. Neither are receipts given for amounts paid in, nor the documents returned which he originally signed.

But the loan shark knows that when taken into court even so formidable an array of documents will have no binding power to compel his patron to pay interest in excess of the seven per cent permitted by law. He therefore makes use of the borrower's ignorance to the fullest and works upon it with a monumental bluff. He knows that he must rely more upon threats than upon his legal security.

In the campaign against loan sharks in Cleveland about three years ago, Mr. Poulson, the City Prosecutor, captured some of the confidential instructions issued to loan shark managers, among others a thirty-six-page book entitled, Blank's "Book of Instructions." This man, who bears the title of "King of the Loan Sharks," in his own advertisement some time ago claimed to be doing a business in sixty-six cities of the country. Some quotations from these confidential papers were presented at the Baltimore convention of the National Federation of Remedial Loan Associations in 1915 by Mr. John E. Taylor, manager of the Equitable Collateral Loan Company of Youngstown, Ohio. The following extracts convey a graphic picture of loan shark methods:

"Do not get timid on account of the kicks by customers. Do not allow too much sympathy, when they come around with hard-luck tales."

"Use 'soft-soap' talk on the borrower only after you have tried stones and gravel. If a customer mentions the law, hunch your shoulders and say you do not know much about it."

"Bluff the borrower by rattling papers in your desk. Pretend to

phone to an attorney, but hold the phone closed. Remember the whole proceeding is more or less of a bluff. Give your customer good hard roasts."

"In the case of a dead-beat, you might bring up the point of a new law, and do whatever bluffing you want to; but to talk to customers in general about new laws I do not approve. There is no use putting the notion into their heads, as they would probably go and see somebody to find out what the new law is. The result would be more apt to harm us than do us any good."

"You can say anything you like to a customer in a sealed letter so long as it is not criminal threats, immoral or indecent."

"We need managers with bull-dog determination. Get some attorney who will sell you his legal letter-heads and then write your customers upon them."

Mr. Taylor, in his interesting paper, speaks as follows on his experience in loan shark methods:

"Sometimes legal looking notices are sent to the victims, such as 'garnishee demand' and 'demand notice,' 'notice of judgment,' 'original notice before suit,' and some loan sharks have gone so far as to have letters printed purporting to come from a local collecting bureau. One of these notices which recently came into my hands was entitled 'Ultimo notitia'—a very legal looking scrap of paper prepared and delivered in such a way that the victim would think it came from the civil branch of the Municipal Court. All these notices have a certain legal look about them in the eyes of the unsophisticated victim, and oftentimes bear fruit, at which the loan shark chuckles to himself and says; 'Well, once again the bluff worked beautifully.'"

The average outsider does not know of the complex organization of the money-lending business. He thinks of each operator as more or less isolated in his operation, bound to his fellow usurers by a "consciousness of kind," it is true, but separated from them by barriers of competition. He is amazed when he learns of the close interrelation which exists among the leading ones and of the high form of organization which the business manifests.

The larger operators do not confine themselves to a single city. A number of the Chicago firms are branch houses of a larger concern which operates in many states. One of these some time ago was doing business in over sixty cities. Recently there appeared as witness in a loan shark case before Judge Landis in the Federal Court a manager of a money-lending firm who reluctantly testified that the owner of his company was the owner of nearly seventy others scat-

tered about the country. Eastern capital is found financing certain of the firms and in one or two instances the firms are chartered in another state. Not only this, but records show that in many instances the real backers of loan shark concerns are persons of influence and prestige in their communities, sometimes prominent in church, fraternal and social life.

In Chicago the leading operators have banded themselves together into an organization known as the "clearing house." This organization, founded in 1895, is a close corporation of the severest type, admitting new members only after most rigid investigation. Its work is carried on with the utmost secrecy. No designation of any kind appears on its office doors. Its members are known not by name, but by number, and the designating number is employed in all communications between member and clearing house and between members themselves. In telephone conversations no information is vouchsafed until the pass-word has been given. The expenses are met by a monthly membership fee paid by each affiliated concern.

The main purpose of the organization is to supply its members quickly with information as to applicants for loans, in this way saving time and expense which would be necessitated by separate investigations. In the files of the clearing house, ready indexed for quick access, are the records of all persons who have borrowed in the past from any member of the association. Everything is recorded which may serve to indicate whether or not the applicant is desirable: his place of business, standing in the community, how often he has borrowed previously, ready or slow pay, etc. When a new application is made to any member of the clearing house, the applicant is immediately looked up to see whether any record already exists concerning him, whether he is owing money to some other concern and how much, and kindred matters. Persons who have dropped out of sight of one firm without settling accounts in full may be located through the clearing house in case they should later make application to another member, ignorant of the existence of this information exchange.

Three times a day young women "runners" make the rounds of the clearing house membership to secure the names and addresses and other information concerning new applicants for loans. This information is checked up with the records already filed in the central office and the result reported back to the office to which the applicant has just come.

With such a system great expedition is possible, and the answer may be given to the applicant within a few hours as to whether a

loan may be granted. Of course the clearing house can afford no information concerning transactions with non-clearing house members, but it is remarkably efficient within its own field. It also serves as a ready instrument of communication among those who compose it.

Of late years, as public opinion against the loan shark business has been growing, the movement against it has gained strength. In a rough way we may classify opposition under the following heads: 1, Publicity campaigns. 2, Organized defense of loan shark victims. 3, Loan shark substitutes. 4, Legislation. These cannot be marked off from one another sharply; they are interwoven. Legislation, organized defense and loan shark substitutes have come about after public opinion has been aroused by publicity campaigns. Likewise certain of the substitutes which now exist have required special legislation before they could be formed.

Constructive opposition to extortionate money lending is generally recognized to head up in the Division of Remedial Loans of the Russell Sage Foundation, of which Mr. Arthur H. Ham is director. Mr. Ham began his work as "special agent for the study of remedial loan problems" in October, 1909, as a result of requests coming from leading persons in the National Federation of Remedial Loan Associations. Since his appointment he has been particularly active in assisting to organize new remedial loan agencies and in securing legislation in the various states.

Publicity campaigns against the loan shark are, within certain limitations, considerably effective. They are instrumental in educating the public, and in creating public opinion against the culpable methods which are a part of the trade. When the interest of the community begins to wane the campaign loses its force, as is evidenced by the history of the loan shark campaigns which have been conducted in various cities.

Organized defense of loan shark victims, growing largely out of interest aroused by publicity campaigns is highly valuable in assisting individual cases, although it does not in itself strike at the root of the trouble. The Chicago Legal Aid Society during its past three fiscal years has settled 1,266 cases, with a total saving of \$16,884.88. The First State Industrial Wage Loan Society of Chicago has had from its inception the defense of the borrower against the loan shark as one of its leading objects. From its opening in November, 1913, to June 1st, 1916, the society had made 2,004 loan company settlements, which had saved to its clients approximately \$19,000 in excessive interest charges. To the large number of settlements made by these two

societies must be added those handled at various times by the members of the *Chicago Tribune* Anti-Loan-Shark Bureau. Fifteen months after it had been established its director, Mr. Daniel P. Trude, stated that "altogether approximately 5,000 accounts have been taken under consideration by the Bureau and the majority settled, for the Bureau has found that the loan sharks have contested in the court less than three per cent of the cases." Besides these definite agencies for organized defense of the small borrower there have been a number of individuals who have rendered genuine service in legal and advisory capacities, usually without any charge. If the amounts saved to those who have been helped seem somewhat small it should be remembered that loans of this kind are made to people who are on small incomes, often to those in extreme circumstances, and that a very few dollars saved may mean a great deal to them. In many cases the settlements mean the rescue of people who have been for years in financial servitude, a much more important matter than the money which is involved.

Mr. Raymond B. Fosdick, formerly commissioner of accounts in New York City, in discussing remedial loans before the Academy of Political Science November 11th, 1911, epitomized a truth which all students of the loan shark situation sooner or later discover:

"Before any campaign to oust the loan shark can be effected, there must be some agency equipped and prepared to take its place. Indeed no campaign of extermination will ever succeed, no amount of condemnation will ever be effective, no negative laws, however drastic, can permanently relieve the present abuses; as long as we have citizens who want to borrow money—and we shall always have them—so long will loan agencies of some kind continue, and it is only the better kind that will succeed in driving out the worse."

This desire to borrow money may be legitimately born of necessity growing out of extremities beyond the power of the individual to avoid. It may be born of lack of thrift or of extravagance, but there will always be persons needing funds to tide over emergencies and willing to go to almost any length to secure them. If legislation does no more than drive the loan shark under a more careful cover, it will only accentuate the evil by forcing him to still more exorbitant charges for the greater risk involved, and there will always be men willing to take the risk if it can be made profitable. When legislation against the loan shark goes on the statute books it is necessary that there be set up substitutes for them, agencies of one sort or another

that can minister to the very real need which has for centuries been the fundamental reason for the existence of the loan shark.

In looking over the various types of substitutes one may roughly group them in four classes:

1. The purely philanthropic, which, whether under a religious organization or a non-sectarian charity or fraternal order, operates a loan fund, charging no rate of interest to the borrower. In this respect it is a charity pure and simple and should be considered just as much so as a gift of food or clothing or rent.

2. The semi-philanthropic organization is established primarily for the sake of the borrower, but it is capitalized and is run upon business principles, not only paying expenses, but giving a small profit to its backers. The members of the National Federation of Remedial Loan Societies are almost entirely of this character. These are business organizations with a social purpose, and should be described as such. They are not charitable in the sense of giving something for nothing, and they are not commercial in the sense of being primarily a money-lending enterprise. Their dividends are usually limited by law.

3. The purely business type is organized primarily as a matter of investment. While it may serve a definite social purpose, it is not organized for that purpose and performs it only incidentally. These organizations keep within the law and so are not to be confused with the loan shark whose characteristic is that of usurious money-lending.

4. The self-help type is probably the most constructive of all. It is exemplified in employees' co-operative loan associations, and in the "Credit Union," which is growing in popularity in the United States. This latter form of organization, known in Europe for sixty-five years, is composed of individuals who are—to quote the language of the Massachusetts law of 1909—"associated by reason of residence, occupation, fraternal association or otherwise;" its objects are the promotion of savings and investments among its members and the provision for a convenient source for legitimate loans. Organizations of the self-help type put a premium upon thrift and saving and the element of mutual benefit, appraise character at its true value and recognize it as a definite form of security. An added advantage resides in the fact that they are independently organized by each group upon whose members themselves each must depend for success or failure.

Valuable as they are in helping to meet the loan shark problem, publicity campaigns, organized defense and systematic competition by means of social-spirited loan organizations can do little until the small

loan business is, in its entirety, definitely regulated by law. The inadequacy of the present Illinois statute is clear upon its face (Hurd's Revised Statutes, 1915-1916, p. 1580, chap. 74, sections, 4, 5, and 6):

"Seven Per Cent May Be Contracted for. In all written contracts it shall be lawful for the parties to stipulate or agree that seven (7) per cent per annum, or any less sum of interest, shall be taken and paid upon every one hundred (\$100) dollars of money loaned or in any manner due, or owing from any person or corporation to any other person or corporation in this state, and after that rate for a greater or less sum, or for a longer or shorter term, except as herein provided.

"No Greater Rate Shall Be Contracted for. No person or corporation shall, directly or indirectly, accept or receive, in money, goods, discount or thing in action, or in any other way, any greater sum or greater value for the loan, forbearance or discount of any money, goods or thing in action, than as above prescribed.

"Penalty for Contracting for More Than Seven Per Cent. If any person or corporation in this state shall contract to receive a greater rate of interest or discount than seven (7) per cent upon any contract, verbal or written, such person or corporation shall forfeit the whole of said interest so contracted to be received, and shall be entitled only to recover the principal sum due to such person or corporation. And all contracts executed after this act shall take effect, which shall provide for interest or compensation at a greater rate than herein specified, on account of non-payment at maturity, shall be deemed usurious, and only the principal sum thereon shall be recoverable."

As it stands, this is a law practically without penalty, inasmuch as the money lender, however unjust he may have been in his dealings, is guaranteed his principal in any event. Furthermore, the Illinois courts have held on this point that interest in excess of the legal rate cannot be recovered once the borrower has voluntarily paid it. Such a law as this makes the position of the extortionate money lender one of perfect safety. Few of his patrons know what the law is, or that legal redress can be obtained by carrying a claim into court; fewer still are financially able to seek the aid of the court. Should any particular case be decided against the lender and the interest be forfeited, that in itself can in no way restrain him from continuing his operations. Because there has been no legal provision for the inspection of his books or records, he has carried on his business without fear of interference. The abuses which citizens of Illinois have endured in the past at the hands of unscrupulous money lenders have

been accentuated by the state's indifference to the need of the regulation of the business.

Following the survey made by the Chicago Department of Public Welfare representatives of the Industrial Club, the Legal Aid Society, the First State Industrial Wage Loan Society, the Illinois Committee on Social Legislation and other organizations of strong civic interest, were organized into a committee to prepare a bill for the consideration of the 1917 session of the General Assembly of Illinois. The bill was framed with the assistance of the Division of Remedial Loans of the Russell Sage Foundation, and it embodied the results of the best experience of all the states which have attempted to regulate the business of making small loans. The salient features of the bill are as follows:

1. Any person or organization desiring to engage in the business of making small loans (sums of \$300 or less) shall first procure a license from the Auditor of Public Accounts. The license shall be renewed annually, and a fee for the same shall be paid. A bond of one thousand dollars shall be filed. The license shall apply to only one firm and place of business, is not transferable, and may be revoked for violation of any provision of the act under which it has been granted.
2. The Auditor of Public Accounts or his authorized agent is given the authority to investigate the business of any licensee at any time and as often as he may desire; and for that purpose he shall have free access to all books and records of the licensee.
3. To all persons or firms which are licensed under this act permission is given to charge interest not to exceed three and one-half per cent per month, or forty-two per cent a year. It has been determined by careful studies that this is as low a rate as can be made consistent with business security and a reasonable profit on the investment. Because of the heavier overhead expense involved in the individual transaction, and the greater risk, ordinary interest rates are impossible in the making of small loans. Admitting the desirability of providing for that part of the public to whom small loans are a necessity, it is considerably better to allow firms to organize under a law which will permit them a fair profit, to take care of that necessity, than by drastic restriction to make a legitimate business impossible.
4. Under this act no charge is allowed other than the stipulated interest, which is to be computed solely on unpaid balances. Many times the money-lender exacts usury under other forms than those

which are technically classifiable as interest. "Renewal fees," "cost of extension," "appraisal charges," "expenses of investigation," etc., are often nothing else than usury in disguise, and therefore must be guarded against carefully.

5. The licensee is further required to give the borrower at the time the loan is made a clear statement of the facts and terms connected with the loan; the amount, when it was made, when it falls due, the nature of the security, the rate of interest, and a copy of the law governing the transaction. He is required to give plain and complete receipts for all payments made, and upon complete repayment of the loan to return all documents signed or pledges made when the loan was accomplished. He is forbidden also to accept, in connection with the transaction, any notes or pledges signed in blank to be filled in after execution.

6. The violation of any provision of the act not only carries with it the likelihood of having the license revoked; it is also made a misdemeanor, for whose violation a maximum penalty of \$500 fine, or six months' imprisonment, or both, may be inflicted.

Such, in brief, are the provisions of the proposed law for meeting the loan shark situation in Illinois. Not only has it met the approval of leading students of the problem, but it has been endorsed by certain of the leading loan firms as well. The latter, having large funds tied up in the business, are anxious to continue; and they prefer to operate in the open as legitimate concerns recognized by law, even at a lower rate of profit, than to do so as outlaws who are in public disrepute.

PHYSICAL STATES OF CRIMINAL WOMEN.¹

ALBERTA S. B. GUIBORD.²

The study here presented was made with a view to determine to what extent inmates of the State Reformatory at Bedford Hills, N. Y., show physical abnormality and whether such abnormality bears any significant relation to that abnormality of behavior designated as criminal or delinquent for which these subjects have been committed. The larger idea of the study is in the interest of the criminal problem as a whole. Formulated specifically it is that since criminal manifestations have a more or less common external appearance they may have at bottom a cause more or less common to all. In order to discover that possible common cause a representative number of subjects showing criminal reactions must be studied in every aspect available to study and the results of that study must be scrutinized for points of agreement. This, it need hardly be said, is no new idea, but until recently no serious attempt has been made in any institution to push such a study to completion. If one representative institution should make such a thoroughgoing study and should divulge as a result anything even approximating a feature common to all it would be fair to assume that its showing would be an index of the population of the whole group of penal and reformatory institutions. In any event the results could be easily verified or disproved for other institutions. Interpretation of the criminal problem would then rest on definite co-ordinated facts instead of, as now, on shifting speculation. The difficulty in the way of making such a study lies obviously, in the well-nigh irreducible complexity of makeup of the adult human organism. Scientific study is restricted to a few arbitrary categories which separated out and evaluated may mean very different things from what they mean when functioning *in situ*. As usually construed the adult human organism is the product of three factors more or less completely separable and measurable, the physical, the psychological, the sociological, and of another, the hereditary factor, so subtly bound up with each of the others that its value as a separate entity cannot be accurately computed. This study deals with the physical factor only.

Our record form is essentially that used for any complete physical examination. It aims to cover as concisely and thoroughly as possible

¹A study made at the Laboratory of Social Hygiene of 200 women committed to the State Reformatory for Women at Bedford Hills, N. Y.

²Practicing physician, Boston, Mass., former member of the staff of the Laboratory of Social Hygiene at Bedford Hills, N. Y.

the field of physical diagnosis except those features which require special technical equipment such as examination of urine, blood, spinal fluid, etc. The latter data should appear on separate appropriate forms according to usual hospital practice. The actual size of the form sheet is 11x8½ in. for use in correspondence size filing case. Both sides of the sheet are utilized. The entire reverse side is given to examination of the Nervous System. Space for detailed description of any significant finding is provided at the bottom of blank. Items of personal history usually recorded on medical histories such as age, birthplace, occupation, etc., are given no space in this form, although they appear in the statistical tables. These items are provided for in the records of the Sociological Department of the Laboratory of Social Hygiene and since the records of the several departments are mutually available repetition has been avoided by omitting from the medical blank whatever is provided for in the other departments. Certain items although noted on the blank were not recorded as routine practice, hence do not appear in the tabulation. For example, sitting height was measured in only a few cases in either group. In Group B. chest measure was not recorded. Record of hair and eye color were omitted from both groups. Under Neurological Examination several items recorded in Group A. were not recorded in Group B. The figures therefore for these items represent one hundred instead of two hundred cases. Ophthalmoscopic examination was made in no case because of the impossibility of having the services of an expert examiner. Examination of color vision, of smell, of taste was not made a routine practice because at first sight tests of these functions seemed more properly to belong to the Department of Psychology. This is a cause for regret and for correction in later work. Since the effects of disorders of these functions, their interpretation and treatment belong to the field of medicine their examination should be included in a study of physical states in at least a sufficient number of cases to establish a norm for this type of subject.

The subject of a record form for physical examination is dwelt upon thus at length because of the fact that in spite of certain restrictions attaching to the use of a stereotyped form it is nevertheless the only means by which completeness and uniformity of procedure can be assured. While this form is by no means offered as an ideal still it is a guide to the extent to which examination must be carried if the physical status of the individual is to be determined. It is hoped that the publication of a sample record form may suggest to correctional institutions the need of adopting the use of similar examination records

in study of the prisoner. At present few institutions make any attempt to evaluate the physical status of the prisoner or to preserve data in permanent form. An investigation of this subject was made in 1914-1915 by the National Committee on Prisons. Questionnaires were sent to 192 correctional institutions in the United States. Of the 134 institutions which replied, 116 were found to make physical examinations more or less satisfactory of the prisoner on admission, but only 59 institutions kept adequate records of the examination.

Statistical data were tabulated in two separate groups of one hundred for two reasons: first for convenience of computation and second because it has been observed in the work of the Laboratory that in respect to the categories referred to above; one group of one hundred consecutive admissions runs curiously like another group. Results of this study appear to bear out this observation. In all details as our complete results indicate the two groups are strikingly similar. In most cases where a wide difference appears there is a natural explanation omitted here for lack of space. Obviously a study of two groups is insufficient to demonstrate generality of this observation but it strongly suggests that at least for the institution under consideration a group of one hundred consecutive cases is approximately a reduced facsimile of the entire population.

Tabulation of results is omitted here for lack of space.

Discussion will be limited to those items which appear to have some causal, contributory, or prognostic relation to abnormal conduct reactions.

PERSONAL HISTORY.

Personal History, precisely speaking, is not a topic pertinent to a study of physical states, yet because it is customarily included in medical records and because of certain data appearing under this head bearing clearly on the subject of delinquency it is included in this study. Average age has here no particular significance since with occasional exceptions the age limits of admission are arbitrarily fixed at sixteen and thirty years. The average age here falls below the median of the prescribed age limits and shows a tendency to preponderance of younger rather than older types. In practice, age of admission has little if any relation to age of incidence of delinquency since many cases have already served one or more sentences in other institutions before entering Bedford.

The items Birthplace, Religion, Race considered without reference to other facts have for our purpose no significance. The items Occupation, Education, Parental Status however have very

definite significance. The fact that nearly three-fourths of the cases came from domestic and factory employment and that only three and one-half per cent had engaged in anything as skilled as office work surely suggests that an occupational factor figures in the determination of delinquency. The fact that ten and one-half per cent are illiterate and that only three per cent completed grammar school indicates the extremely inadequate educational equipment of these subjects. The fact that forty-two per cent had, before the age of fifteen, disturbed home conditions through parental separation of one sort or another and that eleven per cent during some period of their childhood were inmates of orphan asylums are facts that hold the attention. These facts of personal history testify only once again to the unfavorable social and educational background of a reformatory population and indicate plainly enough the necessity for rectifying social defects before a start can be made towards prevention of delinquency.

PREVIOUS HEALTH.

Records under this head were made from testimony of the patient. For diseases of particular significance such as rheumatism, chorea, convulsions, traumata, etc., statements were verified by a field worker. The records are probably open to slight error owing to errors of memory of informant yet it is safe to conclude that in the course of minute, concrete questioning no really important malady has been overlooked. The data given, therefore, may be accepted as at least approximately correct. The relation of previous health conditions to subsequent modes of conduct is at present altogether speculative. To say that a constant correlation exists is presumptive in view of every day evidence that society exhibits a large number of persons of varying degrees of physical disability who are entirely free from criminal or delinquent conduct. Nevertheless it seems plain that a person whose physiological mechanisms have been disturbed during developmental period by morbid processes of one sort or another, as for example disorders of thyroid function, disease of middle ear, toxemias leading to disease of heart, spinal cord, eye, etc., must be classed with the handicapped and granted on this account extenuation if he fails to measure up to normal standards of achievement. Whatever part physical disease plays in the etiology of delinquency, it seems a waste of time to say, can be largely eliminated when preventable diseases are prevented. A record of measles 60%, scarlet fever 15%, acute rheuma-

tism 7% with their hampering sequellae could as well read zero if society and the medical profession put into practice the full measure of their knowledge. One of the most significant items under this head is that of convulsions, 14% having such a history. Of these 5½% are cases of unquestioned epilepsy. As an excitor of abnormal conduct in society and as a cause of mal-adjustment to the routine in correctional institutions variations of epilepsy like many other neuropathic reactions are frequently uninterpreted. It would seem the extreme of injustice to treat a case of epileptic excitement or a case of choreic instability by severe disciplinary measures as is now frequently done.

The record of pregnancy is of peculiar interest because of a kind of chronic apprehension on the part of a normal public lest their offspring should presently be out-numbered by the offspring of criminals, feeble-minded and the like. It appears from these records that from a total of 169 pregnancies only 60 living children remained at the time of this examination. It is true that 50% of the cases were never pregnant and since the average age is only slightly over twenty-one years it might be inferred that there was yet ample time for propagation. This inference has however not much weight since the high degree of venereal infection in these subjects makes sterility a probability. Moreover girls in institutions soon learn from one another the methods of preventing conception so that on leaving they are quite unlikely to give birth to children. Another fact lessening likelihood of numerous population from this source is the almost universally poor physical condition of the children born to these women. In general, they are marantic, rachitic babies, who die early.

One aspect of the question of pregnancy probably not sufficiently considered is early and involuntary pregnancy as a cause of abandonment of social for anti-social practices. It is quite common to find among girls who make up the reformatory population that pregnancy is often the initiation of delinquency. Being as she terms it "ruined," she has no ideal to look forward to, no incentive to resist crude sex instinct or to disregard it as an economic asset. Whether such cases should be forced into legalized status by enforced marriage wherever possible is, strange to say, a moot point amongst persons who have these cases under direction. As abstract ethical principle their attitude may have some soundness but it fades away in face of the practical fact that at present society demands as the sole means of making pregnancy respectable a marriage ceremony.

According to our present social standards the effect of unlegalized pregnancy on the mind of the human individual of whatever grade is depressing if not actually deteriorating. Since marriage is the sanction for bearing children it should be made as nearly universal as possible wherever pregnancy occurs.

Under the head of venereal diseases it will be noted that only 17½% give positive verbal history. This is anomalous in view of the 50% approximately who later by blood test show positive reactions. It emphasizes the fact that in so far as infections of venereal nature are often unknown to the subject they are a greater menace to the public. The probability of concealment from the examiner of the knowledge of infection need hardly be considered as explanation of this discrepancy for two reasons: First, because to offset such possibility histories were taken by questioning for symptoms without disclosing the diagnostic entity of the disease in question, and, second, because the subjects, as experience soon shows, are not sensitive or reticent in discussing their sex practices. On the contrary they are quite frank and business-like in talking of them.

Alcohol use is not higher than would be expected in this class of patients. Indeed its use is rather less general than might be expected and is more frequently a result or an accompaniment than an isolated cause of delinquency.

Laparotomy operations had been performed on 20% of the cases. It would seem that in the interest of constructive eugenics such operations might with highest ethical propriety be made the occasion for rendering these subjects sterile. In only three cases among the entire group had surgical sterilization occurred.

PRESENT PHYSICAL CONDITION.

Measurements.—Anthropometric data in a group of such different nationalities warrant little attention. It will be simply noted that the average height and weight of this group is .73 cm. shorter and 4.7 kg. heavier than the averages shown by Dr. D. A. Sargent³ for a group of over eighteen hundred women with an average age of twenty-one years.

Cephalic measurements bear out the fact already established that the cephalic index is smaller for a negro than for a Caucasian group. In general the cephalic index for the Caucasian group is small, 35% falling below an index of 80. This fact probably has direct relation

³Investigation Into Physique of Women (Massachusetts State Board of Health, 1880), by Professor H. P. Bowditch, M. D. (Dr. Sargent's statistics in comparative table, p. 13.)

to the generally low average of intelligence of the group. The smallest index (63) occurs in a feeble-minded epileptic girl. Anomalies of cranial contour of which there are many unfortunately are not indicated by these measurements.

Posture and Bodily Condition.—Posture is noted as good in only 37%. The others show slumping shoulders, flat chests, protruding abdomens and a generally poor carriage which matches well the inert, unambitious character of their practices and ideals. It is futile to expect to reform or to inculcate new ideals in these individuals until their bodies have been trained to new habits of posture. No person with organs pressed out of shape and vascular mechanisms restricted by faulty posture can be expected to make proper response to the demands of society.

Orthopedic Conditions.—Spinal curvature 15%, asymmetrical chest 10%, bow-legs 6%, knock-knee 7%, etc., are signs clearly indicative of bad hygiene in childhood, of prevalence of rachitis, marasmus, and of other nutritional disorders of preventable nature.

Stigmata of Degeneracy.—Whatever their relation to human biological fitness are at least deviations of aesthetic interest. It is probably archaic to try to demonstrate relationship between these anomalies of physical structure and abnormality of conduct. Nevertheless it cannot escape the notice of even a casual observer that viewed in a group the women of our study do present an undeniable oddity of appearance. When analyzed these oddities are found to consist chiefly of variations in cranial size and shape, and of a typical facial configurations of one sort or another. To what degree these deviations are dependent upon early nutritional and hygienic deficiencies already mentioned in other connections as well as upon the fact of biologic retrogression one would hesitate to offer an opinion.

Tegumentary System.—Items under this head are not of particular value to this study. Scars of traumatic origin (45%) other things being equal, are indicative of lack of intelligent care, those of inflammatory origin (12%) point to adverse metabolic influences, while surgical scars (22½%) indicate that intelligence of some degree has been brought to bear on the individual.

Glandular System.—Under this head we refer to those glands, lymphatic or secretory, accessible to external examination. Cervical hypertrophies (15%) point once again to faulty metabolism thro bacterial infection. Inguinal hypertrophies (18%) are here chiefly associated with venereal infection. Thyroid hypertrophy (6½%) is an item which could well receive detailed consideration in view of the relatively

large number of cases showing mental and nervous disturbances incident to disordered thyroid function. It is unfortunate that other disorders of the so-called internal secretions can not show categorically on the examination blank in use. Disorders of pituitary function seem to be clearly diagnosable in three per cent of cases and it is highly probable that further study of certain interesting cases of obesity accompanied by mental hebetude and changed emotional tone would disclose etiological influences of this nature at present superficially attributed to "pure laziness."

Alimentary System.—The item under this head most warranting attention is that of teeth. It will be seen that about one-third of the population have good teeth or teeth which have no abnormality other than is explicable on the ground of lack of care while one-third have teeth so poor as to force the conclusion that an unusually destructive process has been at work. About 21% show abnormality of shape and placing. Among the cases of "very poor" teeth are 6% showing unquestionable signs of congenital syphilis. This diagnosis has not been made by teeth signs alone but by co-ordinating other signs which make conclusion certain. In addition to the cases definitely diagnosed are several which show teeth signs strongly suggestive of congenital syphilis, but since the aim of this paper is to remain invariably on the conservative side in diagnosis these cases have not been enumerated.

Respiratory System.—Shows tonsils (faucial) pathological 53% and naso-pharyngeal obstruction 23%. Only 4% of cases had received operative treatment for this eminently hampering abnormality. Obstructed breathing from whatever source is a potent excitant of nutritional disorders. It is therefore more or less reasonable to regard it at least as a contributory cause of behavior abnormality. In most of the cases cited the irritating influence has been at work for years and while no sudden change may be expected from its removal, nevertheless it is a duty to correct such defects in any who come under the jurisdiction of the state for reform of conduct.

In view of poor hygienic background it is surprising that so few of the cases show signs of pulmonary tuberculosis. This result is no doubt attributable to the fact that the active educational campaign carried on for some years has finally brought it about that incipiently tubercular persons are detected and properly cared for before reaching a penal institution. Only one individual from this group of two hundred persons had received sanatorium treatment for tuberculosis. 3% were regarded on admission to the institution as cases for special prophylactic attention.

Cardio-Vascular System.—Because of their relation to fatigue, to industrial inefficiency, to emotional and other mental and nervous variations it would seem that disorders of cardio-vascular mechanisms might be ranked among the most important of the somatic factors in determining or influencing conduct reactions. Under this category 18% of cases exhibited Tachycardia, 10% Arrhythmia, 2½% had constant pulse rate of 52 (three feeble-minded girls), 8% had organic valvular lesions. Among the seven in Group A. having valvular lesions, four are syphilitic, one is epileptic and feeble-minded, one is feeble-minded, one is psychopathic with disorder of the thyroid function, one of the syphilitics is also feeble-minded and one is hypomanic.

Blood pressure was measured with the Tycos sphygmomanometer. The data under this head seem to show, (1) a tendency for the higher pressures to occur in the cases of psychopathic make-up; (2) the lower pressures to occur in the feeble-minded cases. The eight cases not examined comprise six of the most deeply feeble-minded of the group and two borderline cases.

The cases (22) with Pulse Pressure of 30mm or less are distributed as follows:

Feeble-minded	10
Feeble-minded border	2
Drug habitues	3
Psychopathic personalities	3
Average reformatory type.....	4

The cases (19) with Systolic Pressure below 100 are distributed as follows:

Feeble-minded	13
Drug	2
Psychopathic	2
Normal average type.....	2

It seems fairly evident that the lower blood pressures occur in the lower grade mentalities as well as that the blood pressures for the entire group are lower than those given for a general population. Woley⁴ gives the average systolic pressure for 1,000 women at all ages at 120mm. Faught's⁵ figures for normal young adults are Systolic 120, Diastolic 80, Pulse pressure 40. The figures of this study are Systolic 107, Diastolic 70, Pulse pressure 37. Our findings seem to

⁴Woley, H. P.: The Normal Variation of Systolic Blood Pressure. The Journal A. M. A., July 9, 1910, p. 121.

⁵Faught. N. Y. Medical Journal, Feb. 27, 1915, p. 396.

indicate that low blood pressures and defective physical and mental make-up are somehow interrelated.

Genito-Urinary System.—Under this head, if the concomitants of venereal infection are excluded, no features of importance appear. Doubtless any non-criminal group of women would show as many abnormalities. Discrepancy between the large number of cases showing by blood test venereal infection and the small number showing it by verbal history and by clinical signs has been mentioned in the discussion of previous health. The following table shows this relation:

	Verbal History.	Clinical Signs.	Blood Test.
Syphilis..... } Gonorrhœa..... }	17½% (Not differentiated by subject)	11% 31%	53% 69½%

With only 13½% of this population showing by blood test freedom from all venereal infection the question of treatment becomes at once a serious problem. Obviously it should be the duty of reform institutions to cure venereal disease in patients committed to their custody but at present in few if any is radical curative treatment of these conditions pursued. The public has a right to expect and in its complacent ignorance doubtless does expect, if it takes the trouble to think about it at all, that its wards receive at the hands of those whom it employs to care for them whatever treatment is necessary to restore them to the community in as nearly a normal condition of mind and body as is consistent with present day knowledge. It is a wasteful and unjust act for the state to isolate for a period of years individuals for purposes of correction only at the end of that period to send them out uncured of syphilis with the result that subsequently serious destructive lesions sends them again into dependence on the state. Cure of syphilis must be established as a basis for potential reform of the individual. Furthermore it is necessary to forestall the danger of bringing into life individuals congenitally syphilitic. At the Waverly (Mass.) State School for Feeble-minded, Dr. Fernald^a reports 10% of the population congenitally syphilitic. The subjects of our study show a minimum of 6% as already cited. It must be kept in mind that the rating here given is a strict minimum and that it is fair to suppose a somewhat larger number since "it is well known that the classical signs of hereditary syphilis are frequently absent in the subjects of syphilitic hereditary." (Marshall, "Syphilis and Venereal Disease" p. 347.)

The peculiar import to this study of the question of congenital syphilis is illustrated by a quotation from the same author (p. 322)

^aFernald, W. E.: Lecture, Feb. 8, 1916.

as follows: "The hereditary transmission of syphilis is one of the chief factors in physical, moral, and mental degeneration." The question here naturally raises itself whether degeneration of moral and mental attributes in persons afflicted with congenital syphilis (hereditary as applied to syphilis is a misnomer) is after all the result of solely toxic influence or whether as is more likely those mental and moral characteristics which have led a parent to become syphilitic do not operate in the offspring thro the more subtle process of heredity which would manifest in mental and moral abnormality regardless of the syphilitic toxine. In other words the mental and moral traits are inherited. Whatever influence syphilis exerts on offspring is through direct infection of cell structure and is therefore a physical effect pure and simple.

The "free from disease" ($13\frac{1}{2}\%$) as indicated by our figures is assuredly too high since this item was compiled on the record of blood test alone.

Nervous System.—The question of relation of abnormalities of the nervous system to modes of conduct is at present little more than a speculation. It would seem however that if in any bodily condition a correlation to conduct could be established it should appear in the field topographically nearest to that portion of the brain in which moral and ethical reactions are generally assumed to have their inception. If conduct is conditioned through any biological mechanism, more particularly through nervous mechanisms it would seem that wherever conduct abnormality exists some of the normal adjustments of the nervous mechanisms would constantly fail and that these failures would appear in examination. With a view to determine whether such correlation does exist in any significant degree details of examination of the nervous system were carefully scrutinized, first the cranial nerve as entities, and secondly other sensory and motor phenomena accessible to examination methods.

Conclusion.—Finally to evaluate accurately either the prevalence of physical defects or their relation to the occurrence of delinquency, it would be necessary to compare the data here given with data obtained from examination of non-criminal women of parallel age and social grade; in other words the non-criminal sisters, cousins, and associates reared in the same nutritive and hygienic medium as the subjects of this study. Lacking such data for comparison we can deal only with the facts as they stand and compare them with an abstract standard of physical perfection or normality. With such a standard in mind

our results show an exceedingly high degree of physical defect. The data have been carefully scrutinized for cases free or approximately free from physical defect. Seven cases from Group A and nine from Group B have been so adjudged. Where only one or two minor defects appear the case has been included in the above count. For example: one case is free from apparent defect except a moderately enlarged but unsymptomatic thyroid gland and hypertrophied tonsils; another is an excellent specimen except a large scar resulting from cervical adenitis in early life and so on. On the whole however the cases enumerated under this head are so far superior to the others that by contrast they must be regarded as approximately free from physical defect. In making up this statistic cases showing positive blood tests for syphilis and gonorrhoea have not been excluded, but it is certainly begging the question to class a person infected with either disease as physically perfect.

The mentality of the subjects classed free from physical defect is for the most part of the better grade. Five from the sixteen thus ranked free from physical defect were regarded on entrance examination as borderline cases requiring further study for diagnosis. One of the five was a morphine habitue. The others were among the more capable and intelligent of the group.

Under the discussion of each head of the examination blank attempt has been made to point out something of the relation between delinquency and the particular defect noted. It need hardly be added that each item touched on has further relations and ramifications which could be discussed at a length impossible in this survey. Here and there in the course of discussion effort has been made to correlate what seem to be the more significant defects with the mental status. This has been done to emphasize the fact that a considerable number of the subjects need no further interpretation to account for the occurrence of abnormal conduct. They are diagnosable entities, feeble-minded or psychopathic, who should not form a part of a reformatory population at all. A study of their physical defects should dovetail with a study of their intrinsic mental abnormality rather than with the purely incidental reaction of conduct.

From the data presented we derive the following generalizations:

1. The group of women here studied is characterized by a high degree of physical defectiveness.
2. The physical defects are, or were primarily, to a large extent

preventable in that they are the result of faulty nutrition, bad hygiene, bacterial infection and other concomitants of unintelligence and poverty.' /

3. The physical defects resulting as they do in some degree of discomfort and inefficiency unquestionably played some part in the conditioning of delinquency. What that part exactly is can be determined only by special study of the individual in whom the defect is found.

The conclusions arrived at obviously contribute nothing unique to the question in hand. They merely emphasize by repetition the fact now generally accepted by modern criminologists that physical defect is one of the factors conditioning abnormal behaviour. If, now, society is sincere in its constantly expressed desire to do away with criminal reactions it must, in order to clear the way for operation of other constructive measures, prevent or correct to whatever extent possible, physical defects in its citizens. The "New Penology" so fluently talked today has nothing to hope for unless it founds its work on approximately normal physical bodies.

The writer cannot close this study without mentioning what seems after personal contact with the problem to stand out as the most compelling conviction of the experience namely, that in our zeal to demonstrate some obscure scientific fact at the base of delinquency we swallow the camel while straining at the gnat. We institute with naive enthusiasm intricate laboratory research or, impatient at the roundabout methods of science, we put into immediate practice in our penal institutions some high ethical formula. We journey about the earth to confer on the historical, the psychological, the philosophical, the eugenic aspect of crime. We, in short, talk all around the edges of the subject meanwhile closing our eyes except for an evasive squint to the one clearly evident fact that at the base of practically all cases sentenced to reform institutions is the one common fact of poverty. Not necessarily the classic poverty of the empty cupboard and the threadbare garment but poverty in its widest sense. That kind of poverty which conditions from birth inadequate nutrition, dirty and unattractive living quarters, meagre education, too early wage-earning, tawdry and vulgar recreational pursuits, absolute lack of æsthetic training and of intelligent home companionship or guidance. In short that kind of poverty which prohibits the operation of cultural influences of any sort. The subjects of our study bear out this hypothesis since

only 5% of the cases had in childhood surroundings that approached even a minimum grade of culture or of wholesomeness.

Discussion of the socio-economic aspect of the problem may, quite properly, be considered out of place in a study such as this. When however the truth is faced that the high degree of physical defectiveness shown by this investigation is the result primarily of adverse socio-economic conditions it seems like futile dilettantism to treat any other phase of the problem before striking at the root.

JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE

CHESTER G. VERNIER, ELMER A. WILCOX, WILLIAM G. HALE

CONSTITUTIONAL LAW.

State v. Stevens, N. H. 99 Atl. 723. *Sales of lightning rods: "privileges and immunities."* Laws 1915, c. 128, regulating the sale of lightning rods, section 3, providing that an agent under a license from the insurance commissioner shall be a resident of the state, if a discrimination against citizens of other states, is one that the state could lawfully make, and so is not violative of Const. U. S., art. 4, sec. 2, par. 1, providing that the citizens of each state shall be entitled to all the privileges and immunities of the citizens of the several states, or the Fourteenth Amendment, prohibiting any state from making or enforcing any law which shall abridge the privileges or immunities of citizens of the United States.

State v. Collins. Wash. 161 Pac. 467. *Validity of statute regulating operation of jitney busses.* Laws of 1915, page 227, requiring bonds from motor vehicles, but not from street car companies, does not violate Constitution, article 1, section 12, prohibiting class legislation, since the distinction is reasonable.

Nor is it invalid because it requires a security company's bond from jitney busses without providing for bonds of other companies, since the requirement is presumably reasonable.

Nor is it valid because it exempts carriers of United States mail from its provisions.

Nor does it violate Constitution, article 1, section 9, providing that no person shall be compelled in a criminal case to give evidence against himself, and that there shall be no imprisonment for debt except in case of absconding debtors.

Nor does it unconstitutionally take property without due process of law.

HOMICIDE.

Parker v. State. Wyo. 161 Pac. 552. *"Premeditated malice."* In a homicide case, it was error to instruct that to constitute "premeditated malice" no particular time need intervene between the formation of the intention and the act, but it is enough if the intent to commit the act with the full appreciation of the result likely to follow was present at the time the act was committed; such instruction in effect stating that defendant could be found guilty of murder in the first degree if the intent to kill was present in defendant's mind when the act was committed.

Where, in a capital case, it clearly appears from the record that such error has been committed as amounted to a denial of substantial justice and deprived defendant of a fair trial, the judgment should be reversed, though proper exceptions were not taken below.

INDICTMENT.

State v. Laflamme. Me. 99 Atl. 772. *Typographical error in caption.* An indictment for maintaining a liquor nuisance of which the typewritten caption alleged that it was found at a term of the Supreme Judicial Court at a certain place on the second Tuesday in October in the year one thousand nine hundred and "fieteen," and alleging the offense to have been committed on August 15, 1915, and between that date and the finding of the indictment was valid; the word "fieteen" being a palpable typographical error for "fifteen."

INDICTMENT AND INFORMATION.

State v. Curley. Okla. 161 Pac. 831. *Forgery: sufficiency: variance.* Where an information charged that the defendant uttered, and passed a forged check, but did not plead the names of the indorsers on the back of the check, held, that it was error for the trial court to hold that the information was defective, because it did not plead the names indorsed on the back of the check. This was error, for the reason that these names did not constitute any essential of the crime charged. Also held that, when this check was introduced in evidence, it was error for the court to hold that, because the names indorsed on the back of it were not pleaded in the information, there was a fatal variance between the proof and the allegations of the information. This was error because the crime charged was that the forged check had been uttered and passed, and the only function that the names of the indorsers on the back of the check performed was to furnish evidence as to the identity of the parties who uttered and passed the check.

Lopez v. State. Ariz. 161 Pac. 874. *Sufficiency.* An information for murder, the commencement of which recited "F. L. accused," etc., omitting the verb "is" before the word "accused," held sufficient, under Pen. Code 1913, section 943; the defect, if any, being one that could be cured by amendment, if timely objected to, and which is otherwise deemed cured by reference to the record.

People v. Carrell. Calif. 161 Pac. 994. *Sufficiency.* An information charging accused with committing "the acts technically known as fellatio," (quoted from the statute) made a felony by 1915 Pen. Code, section 288a, is fatally defective because not stating the offense so as to enable a person of ordinary understanding to know what is intended, as required by Pen. Code, section 950.

"Unexplained, the word 'fellatio' would, to a man of common understanding (indeed, we think also to one of uncommon understanding) be as cabalistic as if written in Egyptian or Mexican hieroglyphics or in Japanese or Chinese characters."

LARCENY.

Clark v. State. Ga. 91 S. E. 231. *Return of stolen property.* The evidence in this case, though circumstantial, is sufficient to exclude every other reasonable hypothesis than that of the guilt of the accused. Therefore the verdict finding him guilty of sheep stealing, which has the approval of the trial judge, will not be disturbed, although it does appear, as counsel for the plaintiff in error insist, that the stolen sheep came back, as was true in the case of "Bo-Peep," which is respectfully submitted to us as authority. While the sheep came back, it does not appear that this act on the part of the sheep is in any wise conclusive that they had not been in fact taken and carried away, as alleged in the indictment; it being entirely for the jury to say whether or not an extended search by the prosecutor, armed with a search warrant, made some three weeks before the home-coming of the sheep, of which the accused had actual notice, may not have influenced the return of the sheep.

SENTENCE.

State v. Lottridge. Ida. 162 Pac. 672. *Error in form of sentence under indeterminate sentence law.* Under the indeterminate sentence law of this state (Sess. Laws 1909, p. 82) any attempt by the trial court to fix a maximum sentence in a criminal case, where such sentence is fixed by law, is surplusage,

and it is not reversible error, where the trial court fixed a sentence at not less than one year and not more than fourteen years, when the statute fixes the maximum penalty at twenty years' imprisonment.

WHITE SLAVE ACT.

Caminetti v. U. S. Diggs v. U. S. 37 Sup. Ct. Repr. 192. *White Slave Act construed; non-mercenary transportation.* Transportation of a woman in interstate commerce in order that she may be debauched or become a mistress or concubine, although unaccompanied by the expectation of pecuniary gain, is condemned by the provisions of the White Slave Traffic Act of June 25, 1910 (36 Stat. at L. 825, chap. 395, Comp. Stat., 1913, sec. 8813), making it an offense knowingly to transport or cause to be transported in interstate commerce any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent or purpose to induce such woman or girl to become a prostitute, or to give herself up to debauchery, or engage in any other immoral practice.

The name given to a congressional enactment by way of designation or description in the act or the report of the committee accompanying the introduction of the bill into the House of Representatives cannot change the plain implication of the words of the statute.

White, C. J., McKenna, Clarke, J. J., dissenting.

CORPUS DELICTI.

Choate v. State. Okla. 160 Pac. 34. *Sufficiency of proof based wholly on uncorroborated extrajudicial confession of the accused.*

In an action for embezzlement where the state proved by competent and sufficient evidence, the fiduciary position of the accused and his receipt of the funds and the failure to account for them at the proper time, but failed to prove that he did not have them at the time of the trial, except by his own extrajudicial confession of misappropriation. Held, that the court erred in leaving the case to the jury.

This case raises two questions:

1. Whether the state prove the corpus delicti.
2. Whether the uncorroborated extrajudicial confession of the accused is sufficient to establish that element.

Both of these rules are directly traceable to a quotation from Lord Hale, to the effect that no one should be convicted of larceny without proof that goods were stolen or for murder without proof that the alleged victims were dead. Hale, Pleas of the Crown II, 290. On principle and by weight of authority the *corpus delicti* consists only of the fact of loss, though some courts include the fact that it was caused by some criminal agency. III Wig. Evidence, section 2072, sub-section 1. The first rule in this proper form, though the necessity for it except as a caution to the jury similar to the reasonable doubt rule in weighing the evidence rather than as a rule of law which might compel the court to refuse to let the case go to the jury, may be doubted, seems at least harmless as it is hardly possible that any jury at the present time would convict even without this rule where there was neither direct nor circumstantial evidence of the *corpus delicti*.

But the second rule seems open to much more objection. Where it is followed, there is considerable doubt as to the kind of corroboration necessary. Some courts require only general corroboration such as to inspire confidence in

the confession. *Bergen v. People*, 17 Ill. 426. While others require other direct or circumstantial evidence of the *corpus delicti*. *Gilbert v. Com.*, 111 Ky. 793. But these distinctions are here unimportant, as the rule seems superfluous in either form.

The rule is based on the inherent weakness of such confessions as evidence (*State v. Stephen*, 11 Ga. 225) and the fact that false confessions are not easily rebutted as is direct or circumstantial evidence of occurrences (as distinguished from words). *White v. State*, 49 Ala. 344. But these bases for the rule seem unsound. There is a direct conflict of opinion as to whether the evidence is weak or strong. Blackstone holds it weak. 4 Black. Comm. 357. Gilbert considers it the strongest kind of evidence. Gilbert Evid. 123. *Regina v. Baldry*, 2 Den. Cr. Cas. 430. *Hopt v. U. S.*, 574, 504. Furthermore it is universally held inadmissible, if induced by hopes of favor or fear of punishment. *U. S. v. Bram*, 168 U. S. 532.

The rule seems to have originated as a humanitarian rule at a time when the accused could not be a witness for himself, had no right to process to compel the attendance of witnesses, had no right to counsel or right of appeal, but all these rights have at the present time been given him. Wigmore, 33 Am. Law Rev. 376, 384 *et seq.* Instances of miscarriage of justice due to uncorroborated confessions are exceedingly rare and all arose in England before the above-mentioned rights were given. III Wigmore Evidence 2794, note 4.

The weakness of confessions, if any exists, is not in the confession itself, but in the reports and testimony given in regard thereto. Erle. J., in *Reg. v. Baldry*, 2 Den. A. C. 446. This danger of falsification of testimony as to confession it seems is minimized by giving the accused the right to counsel and process. The rule is purely theoretical. In the previous reported cases there are none where there have not been some corroboration. *People v. Hennessy*, 15 Wend. 149. It seems impossible to imagine a case where the confession if true could not be corroborated. Hence it seems the only effect of the rule is to lead the court into error and thus secure retrial. And where the court correctly lays down the rule it seems that the jury may often be confused thereby and fail to convict when they might justly have done so.

Hence it seems that the rule is not founded in reason, is unnecessary, and is a device for unscrupulous counsel to secure delay or acquittal by trapping the court or the jury. The principal case seems an excellent example of such delay.

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FORMER JEOPARDY.

Morris v. State. 90 S. E. 361. A conviction by a municipality will not bar an action by the state for the same act, providing that there enters some essential ingredient in the ordinance which is lacking in the state law.

This case is supported by practically all the authorities that allow a municipality to pass an ordinance, which is practically the same as the state law, and it is the great weight of authority that a municipality has that power. There is no question as to the power if the intention of the Legislature is to grant it.

Assuming that the municipality has the power to pass the ordinance, the question naturally arises whether the person convicted in a municipal court may be tried for the same act under a state law substantially the same, if he pleads the constitutional provision of a "former jeopardy" for the same offense.

The great weight of American authority is to the effect that he may be tried under both the ordinance and statute. Most of the decisions so holding are based on the reasoning that the state and municipality are separate sovereignties. *Mayor v. Allaire*, 14 Ala. 400; *Bueno v. State*, 40 Fla. 160, 23 So. 862; *Ambrose v. State*, 6 Ind. 351; *Repass v. Commonwealth*, 107 Ky. 139; *Miss. v. Johnson*, 59 Miss. 543; *State v. Reid*, 115 N. C. 741, 20 S. E. 468; *Kock v. State*, 53 Ohio St. 433, 41 N. E. 689; *Anderson v. O'Donnell*, 29 S. C. 355; *Greenwood v. State*, 6 Baxt. (Tenn.) 567; *Hamilton v. State*, 3 Tex. App. 643; *Ex Parte Simmons*, 4 Okla. 662; *State v. Sly*, 4 Ore. 277; *Town of Van Buren v. Wells*, 53 Ark. 368. Other jurisdictions and many of the above hold that the action under the ordinance is in the nature of a civil action to recover a penalty and hence no bar to a criminal action by the state. *Levy v. State*, 6 Ind. 281; *Hughes v. People*, 8 Colo. 536.

Many of the cases cited by the books as authority for the above proposition are not in point in that the state law is a felony, while the municipal by-law is a misdemeanor. *Robbins v. People*, 95 Ill. 175; *State v. Lee*, 29 Minn. 445, 13 N. W. 913.

Michigan, Connecticut and Missouri were the only states against the weight of authority for many years. *People v. Hanrahan*, 75 Mich. 611; *State v. Welch*, 36 Conn. 216; *State v. Simmons*, 3 Mo. 414; *State v. Cowan*, 29 Mo. 330.

Alabama, Arkansas and Texas have reversed their former rule, which followed the weight of authority, by statute. Ark. Statute acts 1891, pp. 97, Sec. 1; *Ratley v. State* (Ala.), 16 So. 147; *Cast v. State* (Ala.), 65 So. 718; *Davis v. State*, 37 Tex. Cr. R. 359, 39 S. W. 937.

Missouri, which held contra to the weight of authority consistently, recently apparently reversed itself in *State v. Muir*, 86 Mo. App. 642.

The reason for the two sovereignty theory is that the courts applied the analogy to the United States and the State courts trying a person for the same act. This analogy does not appear to me to be supportable. While there is no doubt as to the rule in the State and the Federal cases it does not appear clear why the courts should use those decisions as a rule on which to base the decision in municipal and state cases. It is generally and correctly stated that a municipal corporation is created by the state to aid in the management of the affairs of the state, and is generally considered as the agent of the state. In *State v. Cowan*, *supra*, it was said: "To hold that he can be (convicted by both state and municipality) would be to overthrow the power of the assembly to create corporations to aid in the management of the affairs of state. For the power in the state to punish, after punishment has been inflicted by the corporate authorities, could only find support in the assumption that all the proceedings on the part of the corporation were null and void."

The rule that the municipal by-law action is civil is historical. Anciently in England a municipal corporation could not, by a by-law, authorize an indictment or summary prosecution, nor could it provide either for imprisonment or disfranchisement for disobedience. The ancient by-law used to direct that, for a breach of its provision, the offender forfeit a sum named. This forfeiture could not be recovered in the Mayor's court but was recoverable in an action of debt, or sometimes assumpsit in one of the Westminster Hall Courts. Bishop Statutory Crimes, 4th Ed., Sec. 403.

For other authorities on the principal proposition see 12 Cyc. 288; Dillon on Municipal Corporations 4th Ed. Sec. 368 and note; Cooley on Constitutional Limitations, 4th Ed., 239 and 240 and note.

F. M. OSTRANDER, Palo Alto, California.

FROM WILLIAM G. HALE

CONFESSIONS.

State v. Maranda. Ohio 114 N. E. 1038. *Corpus delicti.* (1) An extra-judicial confession is not sufficient in and of itself to sustain a conviction of a crime. (2) Some corroborating circumstances tending to prove criminal agency, which is one of the elements of the *corpus delicti*, should be offered by the state before such extra-judicial confession is competent. In this case the defendant was charged with arson, and there was, apart from the confession, evidence that the buildings were burned and some evidence tending to show that the fires were not accidental. The confession, therefore, was admissible.

INDICTMENT.

United States v. Gaag, 237 Fed. 728. *Allegation of offense as of a day certain.* In an indictment for giving an order for opium and failing to preserve a duplicate thereof in such a way as to be readily accessible, in violation of the Anti-Drug Act (Dec. 17, 1914, c. 1. 38 Stat. 875), time is of the essence, since the offense can be committed only within two years after the acceptance of the order. The indictment must, therefore, allege that the offense was committed within the essential period, or it fails to allege an offense. The proof, however, need not correspond with the averment, with exactness. The proof may be of any day within such two-year period. The following language from the opinion is of interest: "The general rule is that, even though a grand jury has not evidence of the exact date of an offense, and though its oath is to true presentment make, and though time be not of the essence, it must in the indictment allege the offense of a day certain. To escape the sometime difficulty thus created is another and necessary rule that at trial the day alleged may be disregarded, and the offense proven as of any day prior to indictment and within limitations. Perhaps the interests of both accuser and accused and good pleading require that the indictment shall definitely allege the date of the offense when known. But to compel it to be alleged when unknown often defeats the objects of the requirement, is illogical, falsified by the proof, and works to the prejudice of both parties and to the impairment of justice. At any rate, the first rule is emasculated, "weaseled," by the second, and in the main is but a technicality of time-honored precedent. So in England and elsewhere are statutes that no indictment shall be holden insufficient for failure to allege the time, or for erroneous allegation thereof, when time is not of the essence. And under such circumstances the allegation is so far of form, rather than of substance, that it is believed to be within section 1025, R. S. (Comp. St., 1913, Par. 1691), nullifying defects of form and accomplishing the same statutory end."

EVIDENCE.

People v. Halpin. Ill. 114 N. E. 932. *Cross-examination.* The cross-examination of a witness as to his occupation, associations, and conduct, and also as to other things immaterial to the issues, to determine his credibility, is largely in the discretion of the court, and does not constitute error, unless the

discretion is abused. In this case it was brought out on cross-examination that one of the witnesses for the defendant kept saloons, allowed women in them, ran houses of prostitution, etc.

PERJURY.

People v. Ashbrook. Ill. 114 N. E. 922. *Indictment.* An indictment for perjury may either allege that the false testimony was material, or set forth the facts showing its materiality, and so an indictment, charging that the defendant committed the crime of perjury by falsely testifying that he had not illegally sold intoxicants, in a prosecution against him for such illegal sale, is sufficient, though merely alleging that the testimony was material. Nor need it be alleged that the testimony was *feloniously given*. The indictment was in the words of the statute and every indictment is to be deemed sufficiently technical and correct which alleges and charges the offense in the language of the statute creating the offense.

RAPE.

People v. Kingcannon. Ill. 114 N. E. 508. *Sufficiency of indictment.* A count in an indictment charging statutory rape without force, which failed to allege that the prosecutrix was not the wife of the accused, was fatally defective on motion in arrest of judgment.

Duplicity. As every indictment for rape, if sufficient, includes the charge of assault with intent to commit rape, where a count in an indictment for rape charged specifically both the offenses of rape and assault with intent to commit rape, it was not bad for duplicity and was good as against a motion to quash.

Evidence. In a statutory rape case, evidence that the defendant, the putative father had, or had had, supernumerary fingers, and that the child also had them, is competent as tending to show the paternity of the child, when accompanied by further evidence that supernumerary fingers are usually hereditary, and by the positive testimony of the prosecutrix that the defendant is the father of the child.

People v. Moore. Ill. 114 N. E. 906. *Complaint by prosecutrix.* In a prosecution for rape, a complaint made by the prosecutrix is admissible as corroborative of her testimony, *because* it is the natural and spontaneous expression of feelings; but such complaint made in answer to questions is inadmissible. In this case the complaint was in response to the question, "What are you crying about?" Held, error, but harmless error, since conviction was of assault with intent to rape and not to rape.

NOTES AND ABSTRACTS

The Prevention and Repression of Alcoholism in Anglo-Saxon Countries.—(Original article by Mario Piacentini in *La Scuola Positiva* for December 31, 1916.) Among the Northern peoples the most serious evil is certainly alcoholism. As a matter of fact in Great Britain criminals would be almost non-existent without alcohol. From 1900 to 1910 in England alone 1,750,000 were convicted of drunkenness or of crime having its origin in alcohol. Mercier concluded that in England alcohol is the most fertile cause not only of crime, but of insanity and many species of physical degeneration.

I have frequented the police courts and I can say from my own experiences that a large part of the offences punished were due to alcoholism and among these may be seen a marked percentage of feminine offenders. In a city given to study, and not to industry, like Oxford, there is a large number of public houses wherein is sold spirituous drink and liquors much more harmful than wine or beer, such as gin, whiskey, brandy and stout. In England the climate is very wet; and part of the drinking is climatic and this has its influences on the race, because Northern people drink much more than those of the South. A spirit of reaction has manifested itself and in certain states of the United States alcohol is prohibited and alcoholics are considered persons of an inferior type. It is useful, however, to inquire into the means taken in Anglo-Saxon countries to combat alcoholism.

The struggle against alcoholism may be divided into three classes. Though distinct from each other they are in a sense connected:

A.—Legislative system and social organizations regulating the sale of alcoholic beverages.

B.—Propaganda against alcohol by means of organized societies and with the co-operation of individuals, of the state, and of the church.

C.—Private institutions and state institutions for the care and reformation of alcoholics and alcoholic criminals. Let us examine briefly these three forms of action.

In the comparative history of the laws which regulate the sale of alcohol there have been four systems:

1. Private stores for private profit, but under the control and supervision of the local authorities by which they are licensed. These exist and are known as the licensing system, in Great Britain and Ireland. In the English colonies and almost all of the states in the United States these licenses are renewed from year to year and are revoked for bad behavior. They are not given to persons of bad character or those who have been convicted of drunkenness or crime. In Italy these privileges are frequently given to the greatest drunkards of the country, who then pass on their vices to others. Such a system finds its complement in a legislative system intended to control the heavier alcohols. Naturally taxes cannot be made too high, as thus the making of contraband is stimulated or, if too low, they stimulate the consumption of alcohol, but on the whole a well-considered tax is one of the most important means of combatting alcoholism. In England the tax upon alcohol introduced by Lloyd George produced about 37 millions sterling, that is to say, 30% of the entire taxes, and in addition to this such taxes result in diminishing the establishments in all of the United Kingdom with the exception of Ireland. Besides this, the tax system results in favoring the consumption of beer which is a beverage of lower alcoholic content.

The second system is where the institutions are conducted by corporations authorized for the purpose or by public dispensaries, but not for anyone's private profit. This does away with incentive to sell and is known as the Scandinavian system, and is now in use in Norway and Sweden. The profits are used for public works. The third system is monopoly run by the state, and this exists in Russia and Switzerland. There is finally a system of absolute prohibition. This prohibition is general, as in certain cities in America, in the states of Kansas, Georgia or Maine, or local, as in certain cities in Canada, Sweden or Norway. When there is a partial prohibition, it is side by side with the other systems; for example, laws applicable to the Indians or negroes of the South and in general to all the people of the Mohammedan religion in certain places. In Scotland and England the sale of liquor was prevented in certain places, because the proprietors by common agreement refused to rent their places for public houses.

Not one of these systems can be called the best, the effect of one or the other depending on many conditions which are peculiar to the locality. For example, the monopoly is convenient for the country which imports most of the alcohol it consumes. On the other hand, the Italian national riches represented by grape culture, forming one-seventh of its wealth, finds the license system the best. Of course, in the present state of war the taxes are increased and can be raised still higher and in war times a more regular supervision of the number of places is made necessary. Let us examine the propaganda against alcohol. The fundamental principles of the propaganda should be to educate all people to understand the sad effects of alcohol and to avoid abuse. Such education might be made by means of conferences, or public meetings, or publications, and all kinds of education such as theaters, moving pictures, temperance lectures and matters of the like. Two of the most important influences intended to accomplish these ends are the Y. M. C. A. and the Salvation Army. There are many temperance associations in the United States as well as in England and Ireland, and these associations have created millions of persons who are abstainers. In the county of York such a propaganda alone caused a decrease of 60% in the consumption of alcohol.

As to the propaganda and various systems of regulation, both of these form the battleground of the fight against alcoholism, but in the struggle, as in other social activities, repressive measures are necessary when we are fighting against an evil which gives birth to vice. Such repression ought to bear in mind the purpose to reform those who are vicious through alcohol and there should be an attempt to separate completely from society or the home as much as possible those who are incorrigible. In a country where drunkenness is of itself a crime, as in England, a great severity is manifested in the punishment of those who sin for the first time and this in order that punishment will reform and result in preventing the culpable from falling back into chronic offending. Where this cannot be done the drunkard must not be put into a sanatorium or common madhouse, nor in a common prison, but in institutions to help such special categories of those unadapted to social life, where the patient can be kept in restraint until he shows signs of improvement.

There is a discussion of the various institutions in which inebriates are reformed. These are the conclusions from the systems of regulating and repressing alcohol in Anglo-Saxon countries. First of all, it must be admitted that the evil is repressed and effectively, but there is still much to do. Man

has a tendency to be vicious, and with such increase in richness as we have seen there is larger percentage of drunkenness. There is also a larger margin for this. It has been proved that every time the lower classes receive an increase in salary there is automatically an increase in the consumption of alcohol.

The data as to the results obtained in the reformatories are very meager and it seems that less than half of those who are treated are restored to society.—George F. Deiser, Philadelphia.

A Suggestion Concerning the Truant Delinquent.—In our work in the Juvenile Court, we have during the past year given particular study to cases of truancy.¹ The number of cases of this character compared with any other particular form of delinquency is fairly high and on this account we have tried to make some analysis of the problem and suggest a remedy based on our diagnosis.

At the outset we were confronted with the fact that the chronic absentee had other distinguishing characteristics besides being a truant from school. We found that the families of these children were well known to the various branches of the Associated Charities far out of proportion to the usual percentage. We found that low grade labor on the part of the father was the usual thing, and shiftlessness on the part of the mother was more than common. Also the names of truants in the public schools were well known to the Juvenile Court authorities. In short, there seemed to be a vicious circle from father to son of illiteracy, lack of effort, poverty and crime.

These children when questioned as to the reason for their absence are very vague and uncertain; but the substance of it usually is that they do not like to go to school, the work is too hard and uninteresting and the attractions outside too strong to resist. The parents are at heart indifferent and see little use for much education. They look forward to the time when the boy can stop school and go to work, thus adding his small wage to the meager earnings of the father.

We have examined large numbers of these boys physically and except for a lack of nutrition and general muscle tone, we are unable to say that they differ much from ordinary school children of their own class and age. The mental examination however did reveal considerable of interest. Compared with normals, their intelligence quotient was usually from twenty to forty per cent lower than the average. In fact a large majority were actually border*line mentalities and a study of the parents, the home and general environment strongly corroborated our findings. The parents had proved by their actions and ne'er-do-well existence that they were but first editions of the truant child.

School systems have been up to the present time very curiously constructed by wise men. The curriculum has been laid out and the child has been forced through if he could go. If school interested him, all well and good; if not, so much worse for the child but the fact stood out very plainly that the child must fit the school rather than the school the child. There

¹In making this study only chronic absentee children were counted. Those absent for sickness or actual inability of the parent to send the child, if he had the desire to do so, were excluded as not being real truants. Only cases repeatedly absent where there was no good excuse for absence have been considered.

was considered to be only one type of child and he the normal. Also, in the past, it has been customary among truant officers in public schools to gather in the truants and force them back into school until they were sixteen years of age regardless of whether the school was suited to their needs and capabilities. It was anything to comply with the law and the age limit seemed the only consideration. It appears to have almost entirely slipped the attention of the authorities that possibly these children were being forced to attempt things with which their mental capacity could never cope and that thus forcing them into unwelcome and impossible channels only aggravated the condition and hastened the beginning of a criminal career. In short, they seemed to have entirely overlooked the point that an individual study of each truant in respect to his social, physical and mental data was all important in order to make a diagnosis on which appropriate action could be based.

I am happy to say that the tendency today in many cities is to make the school systems more elastic and to give vastly more attention to vocational work and this is as it should be. We have not reached the day, however, when the school child is individualized sufficiently, when his mental make-up is analyzed as well as his physical condition. Today, if a child is tubercular he is arbitrarily excluded from the general class room and given special care. If he has any of the contagious diseases, we would be horrified to think he would be allowed to be treated as a normal child. Should he have a mental capacity however, differing from the other pupils to such an extent that he cannot compete on equal terms, little thought is given. He is prodded along in the regular channel like a tired horse till he finally falls by the way side, where he is soon forgotten.

Such appears to be the case with the average truant. He is incompetent mentally. He simply cannot keep up with the normal child for he has not got the tools and no amount of proding can keep him up. True enough, some things he can do and do fairly well, but his range is limited. The branches, such as arithmetic, are more than his brain can master but with his hands he can make a creditable showing for such work is tangible and interesting. I do not mean to infer that a child of inferior mentality can make a high class mechanic when he would utterly fail as a lawyer or teacher, but I do mean that he will be more likely to take interest and thus succeed fairly well in manual types of work because this requires less independent thinking and is usually under the direction of some one of more superior capacity.

So it would seem utterly useless simply to force truants back again into schools for normal children and especially so since experience has taught us that just in proportion as we individualize the child and place him according to his mental talents, he becomes interested and truancy decreases. Our vocational schools have done wonders to attract the exceptional child.

This being the case, it would seem logical that school authorities should have the power to authorize competent people to examine mentally as well as physically every child and especially those showing first signs of inability to compete and then *arbitrarily* to place them where they could find work suited to their abilities. If this could be done, I believe many more children would continue in school past the usual dropping out point and that much delinquency and antisocial conduct could be prevented. It would also make these children better prepared to meet the struggle of life for they would leave

school not trained in literature and mathematics but would have some small skill in the arts. Better yet, they would have an interest in life which would go far to lessen in the next generation the poverty, shiftlessness, degeneracy of the present.

H. D. NEWKIRK, *Juvenile Court*, Minneapolis.

Fixes Blame for Dope Fiend Evil.—Unscrupulous physicians and druggists and lax laws which make it easy for addicts to procure them through "peddlers" are blamed for the increase in narcotic drug users in Boston and the state. This was made clear in the report presented to the Legislature yesterday by the Commission to Investigate the Use of Habit-Forming Drugs.

The commission recommends, among other drastic changes in the law, that the entire control of distribution and dispensing of narcotic drugs shall be vested with the State Board of Health; that Boards of Registration in Medicine and Pharmacy may be empowered to revoke licenses of unscrupulous physicians and druggists; that unlawful selling and delivery of narcotic drugs should be made a felony; that it should be an offense for physicians and druggists to have any mutual understanding as to sharing profits on drug prescriptions.

It is also recommended that provision for custodial treatment of persons of both sexes addicted to the drug habit be made by the Commonwealth.

The report, which deals with all phases of the traffic in narcotic drugs, is the result of six months of thorough investigation into the entire subject. Dr. Frank G. Wheatley, professor at Tufts Medical College, is chairman of the commission. The other members are Hermann C. Lythgoe, director of the division of food and drugs of the State Department of Health, and Abraham C. Webber, assistant district attorney of Suffolk County.

The commission finds that despite laws passed and enforced as result of previous investigations the use of narcotic drugs in the Commonwealth is increasing. It is pointed out that there are approximately 60,000 drug addicts in this state, and that they are more frequently found in the large rather than the small cities and rural districts.

"The exact number of addicts, however," says the report, "is not for present purposes essentially important, since it has been sufficiently demonstrated to your commission that the drug habit is so prevalent in this state that comprehensive legislation is necessary to more effectively deal with the subject. The lack of effective laws regulating the distribution of these drugs must necessarily foster the drug habit."

The habitual use of narcotic drugs is not confined to any particular class of people, or to any particular trade, occupation or calling. Of 254 persons who applied for drugs to a physician engaged in a thriving practice among addicts, according to the report, during a period of nine months, 171 were male and 83 female. Of the males 115 were single and 56 married, and of the females 36 were single and 47 married.

"In no instance did a patient give his or her age as under 21, although it is a well-known fact that many addicts are under age. Of these persons, 171 gave their ages as between 21 and 30; 70 between 31 and 40; 10 between 41 and 50; one 53 and one 61.

Of the occupations represented there were 10 actors, 9 actresses, 2 advertising agents, 3 bellboys, 1 brushmaker, 4 barbers, 1 broker, 1 automobile truck

builder, 1 bookbinder, 1 bookkeeper, 2 brakemen, 16 clerks, 1 cook, 1 chef, 2 carpenters, 1 cleanser, 2 candy workers, 7 chauffeurs, 1 cigarmaker, 2 dressmakers, 1 dancer, 1 dishwasher, 3 electricians, 1 engraver, 2 expressmen, 2 elevator men, 1 freight clerk, 1 freight car sealer, 1 factory hand, 1 forelady, 1 dealer in furniture, 1 glazier, 5 housewives, 5 housemaids, 2 hostlers, 2 huckster, 2 interior decorators, 1 insurance agent, 1 ironworker, 1 iceman, 1 janitor, 1 jeweler, 1 laundress, 3 laborers, 1 laundryman, 1 longshoreman, 2 mechanics, 1 manicurist, 9 machinists, 1 mason, 1 milliner, 2 musicians, 1 messenger, 1 night watchman, 1 nurse, 1 porter, 1 pyrographer, 2 piano workers, 8 painters, 2 pianists, 1 publisher, 1 pantryman, 1 packer, 1 printer, 2 peddlers, 1 picture solicitor, 1 real estate agent, 1 roofer, 2 rubber workers, 1 restaurateur, 3 salesladies, 15 salesmen, 3 shoeworkers, 1 student, 2 solicitors, 1 shipfitter, 1 shipper, 6 stage hands, 2 tailors, 6 teamsters, 1 traveling salesman, 11 waiters, 14 waitresses, 1 wardrobe woman, 1 weigher, 4 miscellaneous, and 23 giving no occupations.

The habit-forming narcotic drugs commonly used in this state are opium and its derivatives, morphine, heroin, and codeine, cocaine in the form of hydrochloride, and rarely other drugs.

"In view of the fact that physicians and druggists are licensed by the Commonwealth to handle habit-forming drugs, the control of their illegitimate activities is extremely difficult.

"It has been found that some physicians by means of prescriptions, and in many cases by actual delivery of the drug itself, have caused large quantities of narcotic drugs to be given to addicts for self-administration, and no precautions were taken to prevent the drugs from being passed from hand to hand. Common sense would indicate to these physicians that the addict can in this way procure large quantities of the drug from other physicians.

"The extent of the illicit commerce participated in by these 'drug physicians' will perhaps be appreciated from the data that is at hand from investigations in the city of Boston alone. One physician wrote over 800 prescriptions in 20 days and received the usual charge of \$2 for each prescription. Another physician wrote over 1,000 prescriptions within a few months upon each of which it was stated that the patient was a habitual user and was reducing, and was also a sufferer from 'asthma.'

"Four thousand and fifty-five prescriptions issued by one physician from May to September, 1916, were found in a single drug store in Boston. One hundred and fifty-six prescriptions of the same physician were found in another drug store, and ninety-nine in a third drug store between the same dates.

"Of another physician's prescriptions 200 were found to have been filled by a single druggist between November 6 and November 13, 1916. These prescriptions with few exceptions called for one dram of morphine sulphate, and in many instances as high as 40 grains of cocaine hydrochloride, and frequently both were included in the same prescriptions."

The commission finds that the present laws are inefficient and should be strengthened. Their suggestions are:

They are not easily understood and capable of misinterpretation. The words "obviously needed for therapeutic purposes" should be further defined.

Enforcement of the laws should be made more certain by the adoption of simplified pleading forms.

The penalties for violations of the law are inadequate and should be increased and new offences defined.

Places resorted to by the drug addicts should be declared and treated as common nuisances, and the police authorities should be given the right to arrest without warrant in certain cases.

The hypodermic syringe and needle should be kept from the addict, and the sale of these instruments regulated.

The boards of registration in medicine, dentistry, pharmacy and veterinary medicine should be given broader powers to cancel and revoke registrations and licenses.

The sale and distribution of narcotic drugs by wholesale and retail druggists should be further restricted.

The State Department of Health should be empowered to make rules and regulations for the distribution of narcotic drugs through druggists.

Private hospitals and sanatoria should be specially licensed and subject to rigid inspection.

Provision should be made for institutional treatment and care of non-criminal addicts.

Additional provision should be made for the collection of statistics as to the extent of the use of narcotic drugs in the Commonwealth.—The Boston Post, Jan. 5, 1917.

Laboratory Methods in Criminal Investigation.—It is an incentive to vigorous preparation to learn of the interest which is developing in the proposed course in field and laboratory methods in criminal investigation at the Summer Session of the University of California this coming summer, of which I am to have charge. I am therefore pleased to send you my copy of the "copy" as finally approved for publication in the announcements of the university. I am adding my tentative outline for the laboratory course at the University of California which will accompany the lecture course, and also my complete outline for the course in judicial photography, which I will give concurrently at the recently organized Police School in Berkeley.

The program as arranged at this time is sufficiently elastic to permit modification according to the needs of the class which will be assembled. In the main, however, the work will closely follow the outlines which I inclose.

The university course provides for a lecture daily at 11 o'clock and the laboratory work daily in the afternoon. Both the lecture and laboratory courses are in the nature of concerted work by the several gentlemen named in the announcement and myself.

It is the desire of the university authorities to make the course attractive to as wide a range of sociological and criminological workers as possible. In order to accomplish this I am planning to present the lecture material as much as possible from the point of view that the study of the prevention of crime should include a knowledge of the actual course which a criminal action will take in its accomplishment as revealed by the determination of the usual course, through the application of the resources of the scientific laboratory.

The laboratory course will be more technical and will be arranged especially for those who are interested in the detection of crime or the solution of problems in evidence in any type of legal procedure.

There will be but a limited number of lectures with this division of the

work. My thoughts for them are developing on the theme: Psychological investigation has developed the principle of *modus operandi* by which it is shown that the individual criminal usually operates along very narrow lines and with frequent or constant repetition. May not then the application of the resources of the chemical and physical laboratory in the investigation and solution of criminal problems be considered merely an extension of the system of *modus operandi* with the substitution of the principles and laws of physical forces for the psychological? Treated from this point of view the results should tend to promote a greater correlation between psychological phenomena and physical facts when considered under the rules of evidence.

My own work for both of these courses will be presented along the lines laid down by Gross, Niceforo, Lindenau, Reiss, Paul, Jaiser, Dennstedt, and other workers contributing to the precise investigation of criminal problems, seeking the reduction of much of what is called circumstantial evidence to the interpretation of physical facts which ordinarily escape observation.

E. O. HEINRICH, *Examiner of Questioned Documents*,
Tacoma, Wash.

Report of a Case of Kleptomania.—Apropos of the more recently expressed views of experts in Criminology, particularly those of Healy ("Pathological Lying and Stealing") the following case is of interest:—

A young woman of 22 years had for about a year come into conflict with her associates and friends because of impulsive stealing of articles from their rooms; she had no particular use for these things and has frequently returned them openly before being accused. She has never been involved in shop-lifting, always stealing from girl associates. Although hard pressed financially, she has never sold anything that she appropriated, or made any personal use of the same.

Physical examination showed no signs of organic disease of the nervous system or other organs. She is a strong, rather attractive brunette, slightly masculine in appearance, e.g., has excessive growth of hair on trunk, eyebrows and lip. Sexually she declares herself to be indifferent towards men, but apt to develop very strong affection for one girl friend at a time. She has always been very daring in her physical activities and in childhood was considered a "tom-boy." She states that as a child, she was subject to angry outbursts, being very sensitive, and at such times would become almost unconscious, but never had fainting spells or convulsions. She said, "when excited everything would stand out large to my vision." She was very fond of and very chummy with her father. She has had no love affairs and has always been very ambitious to make a career for herself in the world.

A few years ago while a college student, she was unjustly accused of petty thieving from her fellow students. This was a great shock to her, in spite of being soon after proved innocent. After graduating from college she came to the city and obtained work as a writer for magazines and has lived at a girls' club. Since taking up her residence there, she has had to fight constantly against an impulse to steal articles from the rooms of the other girls. At the time of these thefts she feels no compunction, but afterwards is very sorry to have caused distress to others, and of late has become very moody and kept to herself a great deal, because of the feeling that she is different from other girls.

Under examination she was found to be very eager and interested in trying to get to the bottom of her morbid impulses and during a stay of two weeks in the hospital, no episodes of peculiar behaviour of any kind were observed. At this time she went voluntarily to a sanitarium because of a feeling of uncertainty about herself, e. g., remarked, "I am afraid of what may happen next. When you get rid of one thing, there is always something else and perhaps I shall kill someone next."

Comment:—We have here to deal with a girl who is of a virile type and perhaps homo-sexual in her instincts. After being unjustly accused of theft from a chum she develops some months later a kleptomania for things belonging to girl associates. Is this trait a substitutive form of sexual expression, the reaction of emotional tension in this particular way being due to suggestion and association of ideas? A psychic form of epilepsy might be considered, but there has been no submersion of consciousness at any time.—
HAROLD W. WRIGHT, M. D., San Francisco, Cal.

COURTS—LAWS

Should Alleged Confessions Made to Peace Officers After Arrest be Reduced to Writing Before Admission in Evidence?—The main purpose of the provision requiring that alleged confessions made to peace officers after arrest be reduced to writing is to abolish the evils of the "third degree." There is a very strong popular feeling against the methods of certain police officers in the treatment accorded prisoners in the manner that is generally termed the "third degree." I was skeptical on this point before becoming public defender. From my experience, however, in handling over eight hundred criminal matters during the first two years in office, I am thoroughly convinced that there is sufficient abuse of accused persons to warrant action being taken to prevent miscarriage of justice. In case after case accused persons will stay in jail from two to three months awaiting trial, insisting to their attorneys, to the court and to every one who talks to them, that they are innocent of the charges; yet the arresting officers appear at the trials with statements that, regardless of what was said to everyone else, the prisoners have confessed to them. It seems a very strange coincidence that in very many cases where the evidence is insufficient to convict, the police officer appears as the last witness for the prosecution and tells of a confession made by the defendant in the cell of the jail when he alone was present with the prisoner. I am not speaking of isolated cases. Occurrences of this kind are entirely too frequent.

One of the first cases I handled as public defender was that of *People v. Montenegro*. The defendant and another Mexican were arrested on a burglary charge. Stolen clothing was found in their room. There was no evidence whatever to connect Montenegro with the offense except that the clothing was found in the possession of these two men, and, of course, it is a well-known rule of that mere possession of the property, under such circumstances, would not be sufficient to convict. In this case the defendant had a reasonable explanation to give concerning the property. Montenegro could not talk English and the arresting officer could not talk Spanish. Nevertheless the officer supplied the necessary proof to make out a case for the prosecution. In this case, however, he went a little too far and the jury apparently became disgusted with a confession in a language that the officer could not understand, and acquitted the defendant. It is difficult to explain why the defendant maintained

his innocence through the preliminary examination and during several months that he remained in jail awaiting trial if he had been so willing to tell the policeman of his alleged guilt.

We have in our office transcripts of testimony taken at the preliminary examination in at least two cases where the accused did not have counsel and in which policemen admitted, under oath, that they had struck the accused after arresting them. The following is taken from the reporter's transcript of the evidence taken at the preliminary examination in the case of *People v. Bright and Padillo*, page 9. The transcript was filed November 14, 1914. The answer is by the arresting policeman. The defendants were in court without counsel:

"(Question by defendant Bright) When you forced me to tell my name you hit me in the jaw, trying to force me to tell a lie; you kept forcing me to say that I was guilty; and I would tell you a different name——

"A. I slapped you and told you to quit lying."

The following is taken from the reporter's transcript of the evidence taken at the preliminary examination in the case of *People v. Claude Johnson*, page 12. The defendant was in court without counsel and the questions were asked of the arresting officer. The examination took place June 18, 1915:

"The defendant: You say you seen me coming around the corner running. I was in the street all the time. I seen you coming over the sidewalk and got up and circled into the street.

"A. That was as I seen.

"Q. You didn't tell them how you made me shut up—it was a hard jolt in the jaw, wasn't it?

"A. I gave you a left uppercut in the jaw.

"Q. You didn't tell them what you stopped me with.

"The Court: Any more questions?

"The defendant: No, sir."

A man was recently beaten to death in the city jail of Los Angeles. The district attorney filed an information against a police officer, charging him with responsibility for the death of the prisoner. In this case, however, the defendant was acquitted. Statements by the defendants that they have been misused, physically and otherwise, by arresting officers, after being taken to the jails, are so numerous that one is almost forced to believe that there must be some ground to give them credence.

Experienced police officers on the witness stand are so familiar with the questions which the prosecuting attorneys propound in laying the foundation for the admission of a confession that the answers are on their tongues' ends before the questions are fairly asked. They know that they are expected to state that there were no hopes of reward, offers of immunity, violence, etc., and their answers are readily forthcoming. With most of the experienced policemen it is almost hopeless for the attorney for the defendant to cross-examine on the circumstances of the alleged confession.

In Wharton's *Criminal Evidence* (edition of 1912) we find these statements:

"Section 622f. The arresting officer has always assumed that it was within his power to institute a summary inquisition, and to extort from the suspected a statement that would confirm his suspicion, and to extort from the party suspected a statement that would confirm his suspicion. . . . Yet, notwithstanding the constitutional safeguard, the inquisition still prevails and is as fruitful of results today as it has ever been since its establishment."

A confession made to an officer of the law, if worth anything at all, should, in most cases, be so overwhelming in its effect as to settle the case. It is difficult to argue that a man in his right mind would confess his guilt to a criminal charge unless he were guilty. We, nevertheless, find many cases of so-called confessions concerning which arresting officers give testimony, yet we find that juries hesitate to act upon them. It is clear that if the testimony of the arresting officers on the subject of confession is to be given due weight, the officers have the liberty and sometimes even the lives of citizens in their hands; notwithstanding the fact that they may be actuated by a desire to get convictions. Such a dangerous weapon in the hands of the arresting officer should be properly handled and the accused person taken to the prison cell should be properly safeguarded. If he is willing to confess at all, and if his confession is of such importance and is given under such circumstances that it should be used against him, there is absolutely no reason whatever why it should not be reduced to writing. If the prisoner will not sign his name to the confession it can not be argued that it is free and voluntary. If the practice of requiring written confessions were pursued we would not have the question presented to the minds of the jury in nearly every case of this kind to determine whether the police officer is telling the truth and whether the confession was ever made, or, if made, was not forced from the prisoner.

The amendment proposed is not entirely for the benefit of the accused. Prosecuting officers should welcome a change which will give them just as good an opportunity to get reliable evidence and which will make their evidence, when once properly obtained, much more forceful before the jury. At the same time it will save well-intentioned officers from unjust criticism. The defendant, on the other hand, will be protected from those of the officers who are not actuated by the highest motives.

I make the recommendation on this point, fully realizing that a majority of the peace officers are performing their duties in a proper and conscientious manner. The amendment is proposed for the purpose of affording better treatment for the efficient and honest officer as well as for the accused.—Argument by Walton J. Wood, Public Defender of Los Angeles County, California, before the California Bar Association.

An Act Providing for the Establishment, Government and Maintenance of a Psychopathic Hospital Under the Management of the Board of Regents of the University of California, Regulating the Admission of Patients Thereto, Their Treatment Therein and Discharge Therefrom, and Making an Appropriation Therefor.—The people of the State of California do enact as follows:

SECTION 1. There is hereby established a psychopathic hospital for the study of, and education regarding abnormal mental states, their nature, causes, results, treatment and prevention, and the dissemination of knowledge in such matters; for the care, observation and treatment within the hospital wards, out-patient department or elsewhere in the state of persons suffering from insanity and other abnormal states; for the investigation, in any part of the state, into the primary or precipitating causes of insanity; and for co-operation with local or state authorities and institutions in preventing abnormal mental states and the aggravation thereof by unfavorable environment.

SEC. 2. The psychopathic hospital hereby established shall be located,

erected, conducted, and maintained by the board of regents of the University of California. The board shall acquire in the name and on behalf of the people of the State of California, lands and rights in lands at or near the University of California medical school in the city and county of San Francisco, upon which they shall erect, equip, furnish and maintain a building, or buildings, suitable for said hospital, which shall be at least sufficient to accommodate one hundred patients and the necessary officers, physicians, nurses and employes and to provide for general administration, treatment rooms, laboratories, and an out-patient department. The board may accept gifts, bequests and devices of real and personal property for such purposes and may acquire such property by purchase, out of any moneys specially appropriated therefor.

SEC. 3. So far as not inconsistent with the provisions hereof the board of regents shall provide for the government and maintenance of the hospital. They shall provide for such out-patient departments, laboratories, social service, field work and co-operation with public officers and institutions as may be necessary and advisable. They shall appoint and fix the compensation and define the powers and duties of the director of the hospital and such physicians, officers and employes as they may deem necessary. The director, by virtue of his position, shall be professor of psychiatry in the University of California and pathologist in the state institutions for the insane and mentally defective. He shall devote his entire time to the duties of his office and shall not engage in any other occupation or business. He shall be in direct charge of the hospital and shall have supervision over all officers, physicians, nurses and employes, subject to such regulations as the board of regents may adopt. The board shall fix the charges for the care of patients able to pay the same; provided, that no physician shall receive any compensation for the treatment of patients therein, except such compensation as he may receive from the state.

SEC. 4. There shall be maintained as a part of the hospital a clinical and pathological laboratory, which shall be a central laboratory for the state hospitals for the insane and mentally defective and a laboratory in which research into phenomena, pathology, causation, treatment and prevention of abnormal mental states shall be carried on.

SEC. 5. No patient shall be admitted or cared for at the hospital without the consent of the director, or his authorized representative, nor otherwise than in accordance with the following provisions:

Voluntary Patients.—A person may, with the consent of the director, or his authorized representative, be treated as a voluntary patient on his written request, if he be of the age of majority, or in the case of a minor on the written request of his guardian. In the event that a person admitted as a voluntary patient demands the right to leave the hospital against the advice of the director, or attempts to do so, he shall be discharged from the hospital.

Temporary-care Patients.—When in accordance with the provisions of Sections 2168 to 2171 of the Political Code, in a hearing as to the sanity or insanity of any person, it shall be made to appear to the court that on account of doubt as to the sanity or insanity of such person an order of commitment is inadvisable, or if in the opinion of the court and the medical examiners the case presents complicated mental or nervous diseases which may be treated at the state psychopathic hospital and by such treatment the mental or nervous dis-

ability may be cured or benefited, the court may, upon the written request of the director of such hospital, or his authorized representative, continue the hearing not to exceed thirty-five days and direct that such person be sent to the state psychopathic hospital as a public or private patient, to be confined, observed and treated during said period of not to exceed thirty-five days. Before the expiration of this period, the director of the state psychopathic hospital shall report to the judge before whom said proceedings are pending the results of his observation and treatment of said patient and shall state whether in his opinion said patient is sane or insane. If observation shows that the patient is insane and the court so decides, the court shall proceed as in other cases. If the results of such observation and treatment show and it is the opinion of the director of the psychopathic hospital that such person is not insane, and the court so decides, then the order for confinement, observation and treatment in the psychopathic hospital shall be vacated and the patient discharged therefrom. Patients shall not be committed by order of court to the psychopathic hospital except for the time and in the manner hereinbefore in this section prescribed.

Transfer Patients.—A patient committed to any state institution for the insane or mentally defective in this state may be transferred to and cared for in the psychopathic hospital; provided, that no patient shall be so transferred to the psychopathic hospital except upon order of the state lunacy commission after the consent both of the director of the psychopathic hospital and the superintendent of said institution have been obtained. No patient committed to any state institution for the insane or mentally defective and transferred to the psychopathic hospital may be discharged from the psychopathic hospital except for the purpose of returning him to the custody of the state institution to which he was originally committed, unless the consent of the superintendent of such institution or an order of a court of competent jurisdiction is first obtained. A transfer patient in the psychopathic hospital shall have the same status as if he were in the institution to which he was originally committed. The cost of the care of transfer patients while at the psychopathic hospital in so far as the same is chargeable against the state shall be defrayed from the funds of the psychopathic hospital, but the expense of transporting such patients to or from the psychopathic hospital shall be paid in the manner prescribed by law for the payment of the expense of transporting patients from one state institution for the insane or mentally defective to another.

SEC. 6. It is the intention of the Legislature that the cost of the establishment and maintenance of the psychopathic hospital shall be paid out of moneys specially appropriated therefor and not out of the general funds of the University of California.

SEC. 7. Out of any moneys in the state treasury not otherwise appropriated, there is hereby appropriated the sum of one hundred thousand dollars, or so much thereof as may be necessary, to be expended by the board of regents in accordance with law in the purchase of land for the state psychopathic hospital.—California Assembly Bill 898. Introduced by Mr. Prendergast, Jan. 25, 1917. Referred to Committee on Hospitals and Asylums.

The Military Occupation of Hostile Territory in the Light of Criminal Law.—(Original article by Artistide Manassero in *La Scuola Positiva* for November 30, 1916.) This is a discussion of the rules of international law

bearing on the occupation, either permanent or temporary, of territory by hostile troops, and it is with particular reference to the occupation of Austrian territory by Italian troops and certain legislative or other provisions of the Italian law for the regulation of such territory that it is written.

The following is a summary of the discussion:

When the Italian troops took possession of certain Austrian territory it is true that the rules of criminal law applicable to it are temporary and contingent, but they are nevertheless necessary. If such a temporary occupation by hostile troops becomes permanent, then, of course, it is necessary to adopt permanent legal rules for the government of such territory.

There is, however, a distinction to be made between complete conquest, that is to say, a definite victory and a provisional occupation. From an invasion we pass to a military occupation, which lasts only while the struggle is going on, and during which military control must prevail. The nature of such military occupation has changed in the nineteenth century prior to which the conquered territory was a prize to be disposed of at will.

Now although an occupation may be only temporary a certain authority must be exercised for the maintenance of public order, but this should be limited to the necessity of the case and without losing sight of the nature of the occupation and the guiding principle on the part of the invader should be to make as little change as possible.

From this it results that the conquering state has a choice of various lines of conduct. It may permit the status quo to continue limiting itself to those material advantages that arise from military occupation. If the invasion is with a well-defined intention to maintain permanent sovereignty over the territory invaded and to exclude forever the defeated sovereign, an administration must be established, distinct from the mere exercise of sovereignty in the name of conquest. These rights arise from possession. But if on the contrary the occupation is merely during the war, the powers of the occupant are limited to the necessities of war. Consequently all the laws in force under ordinary circumstances remain with this exception in full vigor.

See Bonfils, *International Law*, Paris, Rousseau, 1912, page 764.

It is necessary, therefore, to inquire what changes are legitimate. The following distinctions are observed: First, the civil law; second, the military law, which the army carries with it; third, the laws which must be enforced by the invading state for the maintenance of public order or civil life in the territory occupied. This last named forms the special object of the present discussion.

In the first place the occupying state ought not to modify nor change the civil law in so far as it affects individuals, their interest being private and the state of war being the relation of one state to another and not of one state to an individual or of one individual to another individual. It follows, therefore, that the removal of officials or their provisional retention is a matter largely of discretion and is founded upon purely utilitarian principles. The military authorities, therefore, leave in force whatever orders or decrees may be left without prejudice and suspend such others as circumstances may require. Therefore, the judges are allowed a wide discretion and it is their duty to aid the district judges, giving advice to the population and whatever assistance may be necessary, with impartial mediation. As to the criminal law, the army carries with it its own criminal law. Its first consideration is, of course, its own

security. Upon the army depends the safety of the country and consequently its actions are based on the principle of self-preservation. From this it follows that there are certain measures commonly known as repressive measures, and these are entirely distinct from criminal law as such. Repressive measures are intended only to preserve the power and integrity of the troops, and these do not partake in any sense of the nature of criminal or penal actions. Repressive measures to be effective must be swift and sure. On the other hand as to crimes not affecting the army, criminals are subject to the Italian laws although the offense may have been committed in the occupied territory and the criminal law follows not only the flag but the person of the military. The military courts, however, have exclusive jurisdiction of military offenses.

It is found, of course, that the military tribunals are not sufficient for all forms of penal law in the occupied territory and consequently the ordinary courts must assume jurisdiction of crimes not affecting the army. Certain military decrees were promulgated for the government of occupied Austrian territory and the tribunals have applied not only the provisions of these decrees but the ordinary criminal law as well. The provisions of the criminal code should, wherever possible, be applied. Certain inconveniences arise, however, where Italian merchants have located in Austrian territory subsequently occupied by Italian troops who may come under the provisions of the Austrian law. In view of the fact that questions of this sort might arise, and that if specific provisions be lacking certain crimes might go unpunished, it follows as a matter of course that any tribunal having cognizance of crimes where military decrees are not effective, must apply the ordinary criminal law of Italy. For example, where a soldier committed homicide, he was condemned by the military tribunal, but this tribunal enforced the punishment provided in Article 371 of the common penal code. Concluding it is certainly commendable to take into strict account the principles of international law concerning the laws of the places occupied, leaving to some agency, of course, the questions of detail.

To the editor some comment here seems advisable. The first and irresistible conclusion from this, as from all arguments by a litigant, is that self-interest predominates. The second is the absolute futility of all principles of international law, where the major premise of the argument is inviolate nationalism.

Admitting the nationalistic, and primeval, and "survival of the fittest" principle of self-preservation, all measures based upon self-preservation are sound. But who fashions the major premise? Obviously the country applying the repressive measures. It then becomes the judge of what threatens its existence. It then must judge also what under international law is a proper repressive measure. Having passed its judgment thus on international law, what becomes of international law? The truth is that inviolate nationalism and international law are two conflicting principles the moment that war occurs. And when there is no war international law is an abstraction which the strong nations regard only in moments of benevolence or when stronger nations enforce a sanction.—George F. Deiser, Philadelphia.

A Humane Measure for the Protection and Care of Certain Children.—No principle is more firmly established in this country than that every child ought to have a fair chance. The public school system is a great expression of this principle. The Juvenile Court is an example of the care of the state for those who need special guardianship.

One class of children at present suffers great injustice. A child born out

of wedlock has, at best, a hard struggle before him. Society and the law ought not to make this struggle harder than need be. At present the law stigmatizes a child with the offensive name bastard; and, what is more serious, it fails to secure for him any adequate support from the father; the trifling sum obtainable by the mother, while possibly of some help under conditions of seventy years ago, is now ridiculously inadequate for the support and education which ought to be the birthright of every child born in Illinois.

Our present law also works injustice to the mother and the public. Practically the whole burden for the care of bringing up such a child is shifted from the shoulders of the father, who is primarily responsible for the child's being, to the shoulders of the mother or to public charity. This is not only bad for the child, the mother, and the public; it is bad for the father who ought to face and carry his responsibility.

The existing law, moreover, affords opportunities for blackmail.

For these reasons, the Illinois Committee on Social Legislation presents the following bill, carefully drawn by Judge Fisher, who has had experience in the Municipal Court of Chicago with many of these cases, and who has conferred with a large number of social workers and with judges and lawyers. It is believed that the whole bill, while safeguarding proper interests, takes a much needed step toward giving the child born out of wedlock a fair chance in the world.

Like the Non-support Act enacted two years ago, it is a measure not to increase public expense but to relieve the public of a burden that ought to be carried by the father. And, like that act, the aim is not primarily to punish some one while leaving the child as badly off as ever. It is a measure to provide for the child. It follows the principle of procedure so successful in the Juvenile Court Law. It creates for the child a legal status, but does not attempt to force any other status upon the parties. Read Judge Fisher's brief.—James H. Tufts, President Illinois Committee on Social Legislation.

SUMMARY.

This bill if enacted into law would:

Establish for the child born out of wedlock a status in law similar to that of an adopted child, thus imposing upon its parents obligations for its support, maintenance and education according to their means. Provision is made for the permanent supervision and enforcement of these obligations by the court.

Eliminate the word "bastardy" from the law.

Provide a hearing before a chancellor who, in his discretion, may avert the humiliation of a trial in open court.

Allow the child born out of wedlock to inherit from its father unless specifically disinherited.

Give the child either its father's or mother's name, according to the discretion of the court.

Permit the court to give the custody of the child to the father, if he is willing, or to the mother. In exercising this authority the court may assign the child to the parent best fitted, economically or otherwise, to provide for its support, protection, education and discipline.

Allow the status of the child to be established even if the father leaves the jurisdiction of the court, guarding against injustice to an accused person, however, by allowing his relatives to defend the suit and by allowing him, as the defendant may do in other equity cases, to reopen the suit within three years.

Provide for an allowance to the mother for court costs in order to permit prosecution of cases and for an allowance covering reasonable hospital and medical care for the mother during confinement.

Provide, upon request by the complainant or direction of the court, for the prosecution of cases under this law by the state's attorney, or if a private counsel is had, the defendant, if the issues are found against him, may be compelled to pay the woman's solicitor's fees.

Provide better protection against the blackmailing of accused persons.

A copy of the bill follows:

A BILL FOR AN ACT CONCERNING CHILDREN BORN OUT OF WEDLOCK.

SECTION 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly:

That, when an unmarried woman shall become pregnant or be delivered of a child, such woman, or, if the child is born, the guardian of such child, may file a bill of complaint in chancery, in the county in which such woman resides, or where the alleged father of such child resides, for the purpose of establishing who is the father of the child. The bill of complaint shall make the alleged father of the child a party defendant; and, where the complainant is the guardian of the child, then the mother and the alleged father shall be made parties defendant.

SEC. 2. The defendants to such bill shall be notified of such proceedings by summons, if residents in this state; or by delivery of a copy of the bill, together with a notice of the commencement of the proceedings, to any defendant residing or being without the state, in the same manner as in other chancery proceedings, except that the summons shall be made returnable at any time within twenty days after the date thereof, and that service by a copy of the bill, together with notice of the commencement of the suit, shall be made not less than twenty days previous to the date at which the defendant shall be required to answer.

SEC. 3. Whenever it shall appear from the bill of complaint, or from an affidavit filed in the cause, that any defendant resides or has gone out of this state, or, on due inquiry, can not be found, or is concealed within this state so that process can not be served upon him, and stating the place of residence of such defendant, if known, or that upon diligent inquiry his place of residence can not be ascertained, the clerk shall cause publication to be made, in some newspaper printed in his county; and if there be no newspaper published in his county, then the nearest newspaper published in this state, which publication shall be entitled "Notice to Establish the Civil Status of a Child," and shall be substantially as follows:

A, B, C, D, etc. (Here giving the names of defendants.)

Take notice that, on the.....day of....., A. D..... a bill of complaint was filed in the.....Court of..... County, praying for the establishment of the civil status of a child born, or to be born (as the case may be) to..... (here giving the name of the mother); in which proceeding you have been made a party defendant.

Now, unless you appear within twenty days after the date of this notice and show cause why the prayer in such bill of complaint shall not be granted, the bill of complaint will be taken as confessed, and a decree entered.

.....
Clerk.

Dated..... (The date of publication.)

The clerk shall also, within ten days of the first publication of such notice, send a copy thereof, by mail, addressed to such defendant whose place of residence is stated in the bill of complaint or affidavit, and who shall not have been served with summons.

The certificate of the clerk that he has sent such notice in pursuance of this section shall be evidence thereof.

The notice required in this section may be given at any time after the commencement of the suit, and shall be published at least once in each week, for two successive weeks, and no default or proceeding shall be taken against any defendant not served with summons or a copy of the bill, and not appearing, unless twenty days shall intervene between the first publication, as aforesaid, and the day at which such default is proposed to be taken.

SEC. 4. Every defendant who shall be duly summoned shall be held to answer on the return day of the summons; or, if such summons shall be served less than three days prior to the return day, then three days after such service.

Every defendant served by a copy of the bill, together with a notice of the commencement of the proceedings, shall be held to answer within twenty days after such service.

Every defendant who shall be notified by publication, as herein provided, shall be held to answer within twenty days after the date of the first publication of the notice.

The answer shall have no greater weight as evidence than the bill of complaint.

In default of demurrer, plea, or answer at the time specified, or at such further time as by order of court may be granted, the bill of complaint may be taken as confessed.

Where the only notice given to a defendant is by publication, as herein provided, and defendant defaults, the wife, children, parents, sisters, or brothers of defendant may, on application, be given leave to defend the suit, but they shall not thereby be deemed parties to the suit, nor shall any decree entered in the cause have any greater effect as against the defendant than a decree entered without such defense being made.

A decree entered in any proceeding under this act against a defendant who shall not have been summoned or served with a copy of the bill, or who shall not have received the notice required to be sent him by mail, shall be subject to the right of the defendant to appear and answer the same, as in other decrees in chancery made upon like notice.

SEC. 5. The issues shall be made up on the bill of complaint and answer thereto; and, when the case shall be at issue, or on default of answer by the defendant, the court shall proceed to hear evidence, the same as in other chancery proceedings. If the court shall find that the mother was delivered of a child out of lawful wedlock; that at the time of the birth of the child or at the time of the filing of the bill of complaint the mother was an unmarried woman, and that the defendant is the father of the child, a decree shall be made, setting forth the facts, and decreeing that the defendant is the father of such child, and that as to such father, the child is and shall be, to all legal intents and purposes, his child.

SEC. 6. The court shall also, in such proceeding, determine whether the child shall have the name of the father or mother; whether the father or the

mother of such child shall have its custody; but, in no event, shall the custody be granted to the father unless he is willing to have the custody of such child. Where both the father and mother desire to have the custody of the child, the court shall grant the custody of the child to the parent more fit and able to care for, protect, train, educate, and discipline such child, if, in the judgment of the court, it is for the interest of such child and of the people of this state, that the custody of the child be given to such parent.

SEC. 7. The court may decree that the parents, or either of them, shall provide for the reasonable support, maintenance, and education of such child, designating what amount each shall pay, and how and to whom payable; and, in determining the amount to be allowed, the court shall have reference to the condition of the parties; provided, however, that such decree for support, maintenance, and education of the child shall not be a bar to any criminal prosecution of the defendant for his abandonment or failure to support such child, nor to any proceedings for the support of such child under an act entitled "An Act to Revise the Law in Relation to Paupers," approved March 23rd, 1874, in force July 1st, 1874.

The court may also grant an allowance for the complainant's costs to prosecute the suit, as well as for her solicitor's fee; and may decree that the father pay reasonable expenses for hospital and medical care incurred or to be incurred by the mother during confinement.

In all cases where provision is made for the support, maintenance, or education of the child, for the payment of medical or hospital expenses, or for the payment of the costs of the proceeding, the court shall require the person so decreed to make such provision to give reasonable bond, with or without surety, for the faithful compliance with the decree of the court. Such bond shall be for a period of not less than three years, at the expiration of which time the court shall direct the giving of new bond; and the court may, on application, from time to time after the entry of such decree, make such alterations in the allowance for the support, maintenance, education, care, and custody of the child, as well as in the security given, as shall appear reasonable and proper.

SEC. 8. Any decree entered as aforesaid shall be conclusive evidence of the facts it recites and of the order made; and shall be admissible in evidence for or against the child, or for or against either party to such decree, in any proceeding at law or in chancery, as well as in any criminal proceeding prosecuted for abandonment, non-support, neglect, or contributing to the dependency or delinquency of the child.

SEC. 9. Whenever it shall be made to appear by the bill of complaint or affidavit filed in the cause, that the defendant has no property within the county, or that the departure from the county of the defendant would leave the child born or to be born destitute and without means of support, the court shall, without any further showing, direct the issuance of a writ of *ne exeat republica*; and, upon granting of such writ, the court, judge, or master, in cases where, by law, a master in chancery has the power to order the issuance of such writs, shall endorse or cause to be endorsed upon the bill of complaint what penalty, bond, and security shall be required of the defendant.

The court, judge, or master shall have the power to require the complainant to give bond, with or without surety, conditioned that the complainant will prosecute the bill with effect, as in other cases where the writ of *ne exeat* may

issue; (but where the complainant is not the mother of the child, the court may issue the writ without bond).

SEC. 10. Should the parents of the child inter-marry, the bill shall be dismissed, and the child shall be deemed and held their child as if born in wedlock.

SEC. 11. It shall be the duty of the state's attorney of the county where such bill of complaint may be filed, to represent the complainant in the bill whenever the complainant shall request, or the court shall direct; and to cause such bill to be filed upon request, and to prosecute same until the final determination and disposition of the case; and, if a decree shall be entered, directing the parties to provide for the support and maintenance of the child, to prosecute any motion or motions, petitions or applications to enforce compliance with such a decree.

SEC. 12. No final decree shall be made under this act until after the birth of the child.

SEC. 13. No proceeding shall be started under this act after two years from the birth of the child, unless the father has previously acknowledged the child to be his child, nor at any time after the death of the alleged father.

SEC. 14. No relief shall be granted in pursuance of the provisions of this act if the mother of the child has not resided in the state six months next preceding the filing of the bill, except where conception took place within this state.

SEC. 15. An act entitled "An Act Concerning Bastardy," approved April 3rd, 1872, in force July 1st, 1872, is hereby repealed; provided, however, that this clause shall not apply to proceedings commenced or to be commenced hereafter in cases where the child was born prior to this act taking effect.

A BRIEF FOR THE PROPOSED LAW.

By Judge Harry M. Fisher, Morals Court, Chicago.

The law in Illinois dealing with illegitimacy (Chapter 17, Hurd's Revised Statutes), is entitled "An Act Concerning Bastardy." It is regarded as a civil action, but criminal in procedure. Suit is started by complaint, upon which a warrant is issued. The issue is "whether the person charged is the real father of the child or not," and is tryable by jury. Upon conviction, judgment is entered for an amount not exceeding Five Hundred Fifty Dollars (\$550.00), payable One Hundred Dollars (\$100.00) the first year, and Fifty Dollars (\$50.00) each year thereafter, for nine years. Payment is secured by bond. If the father absconds, he can not be brought back by extradition proceedings.

The money payable under the judgment goes to the mother. She may settle her case for Four Hundred Dollars (\$400.00); with the consent of a county court, for less. I doubt whether the whole sum of Five Hundred Fifty Dollars is collected in more than twenty-five per cent of the cases. Usually the child is a charge on the public; this in addition to the disadvantage of being deemed legally and socially a bastard.

I take it for granted that it is generally agreed that this law is wholly inadequate, and out of harmony with modern thought on the subject.

The disagreement seems to be as to the extent to which we should go in altering the situation. Some feel that the child's accident of birth should make no difference in his standing in the community, nor in his relation to

his natural parents; others that the bringing of an illegitimate child into the world should be punishable as a crime. Some would have us go to the extent of making the birth of an illegitimate child, by operation of law, a marriage between the parents. A large group interested in this question takes the view that not only the child, but the mother should be protected, by making the father bear the burden of her support, as well as that of the child. Some insist that the burden of proof of innocence rests on the father, and that the law makes it possible for the mother to bring as many defendants to one action as she chooses, from the men who had sexual relations with her during the period of gestation; and that, where the actual paternity can not be established, all such defendants be compelled to contribute to the support of the child.

Whether or not we are ready to accept any of these extreme views is questionable. The time when society will regard the illegitimate child on a par with the legitimate is probably far distant; but there is no reason in law or morals why such child should not, at least, be entitled to support, maintenance, and education at the hands of its natural parents, according to their means.

Our present bastardy law has been in force since 1845, and when a change is attempted of a law in force for such a length of time, it should be done conservatively. No new remedies should be granted by law unless the need for such relief is fairly evident.

The foregoing bill has, therefore, been drafted, with that thought in mind. It aims to secure only such relief as seems generally conceded to be necessary, without touching the extreme measures advocated by many. The underlying idea of the bill is to create, as between the natural parents and the child, the same obligations, as nearly as possible under our present social system, that now exist between parents and children born in wedlock. To that end, the bill provides that the proceeding should not, in the first instance, be criminal, nor should it necessarily be a proceeding for support. Its main purpose is to determine the status of the child, and to establish, by decree of court, who the natural father is. That fact established, the duties and obligations of the father to the child then follow by operation of law, and are the same as between a foster parent and adopted child. It does not, strictly speaking, legitimize the child, but establishes a relation which might be regarded as an *involuntary adoption*. These duties and obligations are not expressly enumerated in the bill; they follow as a matter of law from the establishment of the status by the decree. The father is subject to all the laws in force for support, maintenance, and education of the child. The child inherits the same as an adopted child would.

To establish this relation, the bill provides a proceeding in chancery, for the following, among other reasons: It has been urged that juries (where the issues may be proven by a mere preponderance of evidence) have, as a rule, been swayed by sympathy for the woman and child, and have paid little attention to any defense of the reputed father; with the result that accusation meant almost certain conviction. This, it is said, has led to many abuses, particularly in the country districts. The law has been made an instrument of extortion on the part of unscrupulous women. Therefore, by putting this class of cases under the jurisdiction of the chancellor, the hearing would be had by the judge, without a jury, and the court would be in a position to inquire into the fairness of the proceedings. Where the good faith of the complainant is questioned,

or when other conditions appearing on the trial justify it, the court could continue the hearing from time to time, until the chancellor is fully advised on all the matters.

The chancellor could also, in a proper case, hear the evidence in chambers, without exposing the parties and witnesses to the humiliation of a hearing in open court.

Moreover, the most serious offenders could be reached by such a proceeding. Under the present law, or any law which falls short of making bastardy a crime, extradition proceedings can not be instituted to bring back a father who absconded from the jurisdiction; whereas, in chancery, jurisdiction may be obtained by substituted service, and the legal status of the child established in the absence of the fugitive father. This method of obtaining jurisdiction is now in use in cases affecting the relation between husband and wife, the adoption of children, and in proceedings before the Juvenile Court. It may, with the same degree of fairness, be resorted to in cases establishing a civil status, as in cases dissolving it. When the relation is established, the father can be brought back for non-support of his child.

The question was raised whether trial by jury in such cases can be abolished. Careful investigation of the law satisfied me beyond doubt that this may be done. The remedy suggested by this act was not known to the common law; nor is this proceeding, in any sense, similar to our bastardy proceedings. Even if this were to be regarded as a suit in the nature of a bastardy proceeding, still it could be made a chancery action, because, in so far as such questions were at all subject to the jurisdiction of the court, at common law they were heard in the ecclesiastical, and not in the law courts, and, therefore, properly belongs to the chancery division. In fact, at common law, the bastard was regarded as *filius nullius*; the child of no one. This law has not been changed in Illinois, although the child is permitted to inherit from the mother. Therefore, a proceeding to make an illegitimate child the child of the father is an entirely new statutory remedy, and may be tried without a jury.

An additional advantage of trying such case before a chancellor is to be found in the fact that a court of chancery, having obtained jurisdiction over the person and subject matter, would have a right to determine all questions affecting the guardianship, support, care, custody, and education of the child; and the guiding consideration for the court would be the interest of the child and the welfare of society. The court could guard against such child's becoming a public charge; inquire into the fitness of either or both parents to have the custody of the child; and appoint some person other than the parents as the guardian of the child, if such action is deemed just and equitable.

In Cook County the judges could designate one judge to try these cases, probably the judge sitting in the Juvenile Court, thus insuring a speedy hearing. In the other counties the need of a preliminary hearing before a justice, and the holding over to the next term of court would be obviated, and time saved.

On the question of service of process by publication, the bill follows the provisions of the chancery practice act, and specifically provides that, within three years after a decree is entered, where substituted service was had, the defendant may come in and get leave to defend the same as in all other chancery cases. Of course, no support order can be made where service was by publication. Resort can be had, however, to the criminal courts for non-support. The right is given to the relatives of the defendant to defend on

their own behalf, without binding the defendant served by publication only. Testimony may be offered by depositions (which can not be done in criminal cases, or even quasi criminal cases, without the consent of the parties).

Provision is made for an allowance for solicitors' fees, and for the payment for the reasonable expenses for hospital and medical care incurred by the mother during confinement.

It is made the duty of the state's attorney to represent the complainant, at her request, or at the court's direction.

Six months' residence within the state is required before a bill can be filed, and a two-year limitation after birth, is made for the commencement of the proceedings.

The word "bastard" is entirely eliminated.

Intermarriage between the parents at any time would legitimize the child.

The court is empowered to change or modify its decree for support and maintenance any time after the final decree; and it is left to the discretion of the chancellor to determine whether the child should bear the name of the father or the mother.

In a proceeding where the principles of equity guide the court, ample protection is secured for the defendant, and just provision is made for the unfortunate child.

The possibility of using the law as an instrument for extortion will be greatly minimized in such a proceeding. Altogether, in my opinion, we come nearer a solution of the problem, as far as it can now be solved, than by any other proceeding thus far suggested.

There seems to be some difference of opinion as to whether the child should be given the right to inherit. Under the provisions of this bill, if a decree is entered during the lifetime of the father, the child would inherit directly from him (but not collaterally), subject to the power on the part of the father to disinherit it by will. This, in my opinion, is eminently fair. It can work no hardship upon anybody, since the father has the right to disinherit the child; and the provision in the bill that the proceedings abate upon, and no decree can be entered after the death of the father, is a guarantee against unfounded claims to an estate. The rights of the other members of the family are in no way affected, unless the father is willing that the child should inherit. No spurious claims can be made to the estate, since the only evidence of the relationship would be a decree entered during the lifetime of the father.

Fraud by Italian Contractors.—Let us take heart. The contractor who would make money by cheating the very soldiers who are sent out for his own defense as well as that of his other countrymen is not purely an American product.

Two Italian contractors were arrested under the following circumstances:

Caravilli Pietro and his partner took a contract to furnish boots for the infantry and also for the bicycle corps at a given price and in conformity with certain specifications. In a shipment of September, 1916, an examination of 870 pairs of shoes disclosed that some of them lacked a half of the sole, others had heels of old leather and of scraps, and others instead of leather soles had pieces of wood substituted. As a result the contract was annulled and pro-

ceedings brought against the above named and his partner for fraud. These two contractors were able to prove that a shoemaker named Luccini Giuseppe had assumed a sub-contract for a certain part of the work, knowing that it was intended for the use of the army, and he it was who had been carrying on the fraud, and had himself manufactured the shoes in which the fraudulent substitutions had been made.

Immediately we take a dislike to the shoemaker, because instead of showing any defense to a low kind of fraud he resorts to technical objections to the jurisdiction of the military tribunal and for a time succeeds in having the judgment pronounced against him reversed until it reaches the Supreme Court, which decided finally that the military court had jurisdiction and that the judgment pronounced by this court should be carried out. Of all the crimes that come before the courts none seems more senseless and contemptible than that of maintaining a watchdog as a protection against marauders and keeping it either weak or ill by refusing it proper food or shelter.

This case was reported in *La Giustizia Penale* of December 7, 1916.—George F. Deiser, Philadelphia.

To Provide for the Sterilization of Inmates of Institutions having the Care and Custody of Idiotic, Imbecile, Feeble-minded and Insane Persons, in Cases where such Sterilization will Materially Improve the Mental or Physical Condition of Such Persons, and in Cases Where, Owing to the Idiocy, Imbecility, Insanity or Feeble-mindedness of such Persons, not being in Permanent Custody, the Procreation by such Persons would produce Offspring Similarly Affected.—Section 1. Be it enacted by the Senate of House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That within ninety days after the first day of July, one thousand nine hundred seventeen, the board of trustees, managers, or directors of each institution having the care and custody of idiots, imbeciles, epileptics, insane or feeble-minded persons, which institution is supported in whole or in part by appropriations made for that purpose by the General Assembly, shall constitute and appoint a commission to consist of at least one competent neurologist, and one surgeon of recognized ability, who may be appointed from the regular staff of such institution, the duty of which commission shall be to examine the mental and physical condition of the inmates of such institution, and the personal records and family traits and histories thereof, and to determine and report in writing to the board of trustees, managers or directors of said institution, from time to time:

(a) In what, if any, cases, the physical or mental condition of an inmate will be materially benefited by sterilization, there being no probability that such condition of the inmates can be otherwise improved, and

(b) In what, if any, cases, the condition of an inmate is such that by reason of his or her imbecility, idiocy, insanity, epilepsy or feeble-mindedness, procreation by the inmate would produce offspring similarly affected, and there is no probability that the condition of such inmate will improve to such an extent as to render procreation by said inmate advisable. The said commission shall accompany said reports with specific recommendations for the sterilization of the inmates reported upon, with the reasons therefor, and the method of sterilization recommended in each case.

Section 2. Upon the receipt of any such report and accompanying recommendations, the said board of trustees, managers or directors of said institution shall consider the same and pass separately upon the case of each inmate recommended for sterilization, and if they approve any such recommendation by an affirmative vote of not less than three-fourths of the members of the board, they shall record upon their minutes an order for the sterilization of the inmate so recommended therefor, specifying in each case the manner in which the same shall be effected; but the sterilization of no inmate in permanent custody shall be ordered unless it shall appear from the report of the commission that the mental or physical condition of such inmate will be materially benefited thereby, and that such condition cannot probably be otherwise improved. The said board of trustees, managers or directors shall thereupon present their petition to the court of common pleas of the county wherein such institution shall be located, reciting the recommendations of said commission, and the action taken thereon by said board of trustees, managers or directors, and praying for an order of said court, approving the order made in each case by the said board and directing the execution thereof.

Section 3. The said court shall thereupon set a day for the hearing of said petition and order that notice in writing of the time, place and nature of such hearing shall be given to the nearest kin, guardian, committee or other legal representative of each person so ordered to be sterilized, as the court may designate. If it shall appear to the satisfaction of the court that such person has no kindred, guardian, committee or other legal representative, or that his or her nearest kin, guardian, committee or other legal representative is financially unable to employ counsel to represent them, the court may in its discretion appoint counsel to represent the person ordered to be sterilized or his or her nearest kin, guardian, committee or other legal representative, at such or any further hearing or proceeding, and fix the compensation for the services of such counsel, which compensation shall be paid upon the order of the court by the county wherein such person so ordered to be sterilized has his or her legal settlement in Pennsylvania, or if he or she has no legal settlement therein, then by the county wherein said institution is located.

Section 4. At the said hearing, and the subsequent proceedings, the board of trustees, managers or directors of said institution shall, if they so request, be represented by an assistant attorney general. If at such hearing the court is satisfied that the persons ordered to be sterilized, or any of them, are, severally, potential to produce offspring and that either

(a) Their mental or physical conditions will be materially benefited by sterilization, and that such condition cannot probably be otherwise improved, or

(b) That by reason of their imbecility, idiocy, insanity, epilepsy or feeble-mindedness, procreation by such persons, not being in permanent custody, would produce offspring similarly affected and there is no probability that the condition of such persons will improve to such an extent as to render procreation by them advisable, then

The said court shall order and direct that the order of said board of trustees, managers or directors be approved so far as the same relates to the sterilization of persons concerning the condition of which the court is satisfied as above, with such modifications as may to the court seem proper, and order and direct that the same be carried into execution, unless an appeal from such

findings and order shall be taken to the Superior Court within thirty days from the filing of the same, either by the board of trustees, managers or directors presenting said petition or the representatives as above enumerated of any person directed to be sterilized by such order, and the said Superior Court shall have power to review and affirm, modify or disapprove such findings and order and such appeal shall operate as a supersedeas.

Section 5. When the order of any such board of trustees, managers or directors of any such institution, for the sterilization of an inmate of such institution shall have been approved by the proper court of common pleas as aforesaid, and no appeal to the Superior Court shall have been taken from the order of said court approving the same within thirty days after the filing of such order, or if any such appeal shall have been taken, then at any time after the filing of a decree of the Superior Court affirming the findings and order of the said court of common pleas in the premises, the persons ordered to be sterilized in said order shall be sterilized by the surgeon member of the commission recommending such sterilization, or by such other skilled surgeon as the board of trustees, managers or directors of said institution may select and designate, in the manner designated in the order of said board, unless otherwise directed by the court approving said order or by the Superior Court on appeal, and any expense incurred thereby shall be defrayed by such institution. The aforesaid order shall constitute complete authority for the performance of said operations, and no surgeon performing the same shall be held responsible in any place for the performance thereof.

Section 6. It shall be the duty of the commission appointed by the boards of trustees, managers or directors of each of the institutions aforesaid, to keep a permanent record of all cases and histories examined into and of all reports and recommendations made by them, and of all orders made and received by them, and all operations performed pursuant to their recommendations, and to annually make a report in writing of such records to the Secretary of the Board of Public Charities. All expenses necessarily incurred by the commissions herein provided for shall be paid from the appropriations made for the support of the institutions by which they are respectively appointed. The cost of all legal proceedings not otherwise hereinbefore provided for shall be paid by the county from which the inmate or inmates respectively, concerning which such proceedings are had shall have their legal residence, or if such inmates have no legal residence, then at the cost of the county in which the institution of which they are severally inmates is located.

JUVENILE DELINQUENCY.

Juvenile Delinquency in Italy.—Professor Carrara of the Institute of Legal Medicine and Criminal Anthropology takes issue with a good deal of pessimistic writing on the subject of juvenile delinquency. While he admits freely that the number of juvenile delinquents has increased in recent years, and increased out of proportion to increase of population, yet he produces figures to show that this increase tallies very closely with the increase of delinquency summed up for all ages. There are apparently no new nor startling causes at work driving youth into crime. On the contrary, the various patronages, protective societies, etc., are actively combatting the adverse conditions threatening children. Three of Professor Carrara's tables will bear reproduction in part.

TABLE I.
ABSOLUTE INCREASE OF JUVENILE DELINQUENCY.

Ages.	Number delinquents annually per 100,000 population in each age group.	
	1891-1895.	1896-1900.
9 to 13.....	131.57	147.04
14 to 17.....	665.37	719.38
18 to 21.....	1,118.34	1,124.46
All ages	548.39	551.83

TABLE II.
PROPORTION OF JUVENILES (9 TO 21) TO ALL DELINQUENTS.

Year.	Percentage of Total.	Year.	Percentage of Total.
1890.....	22.96	1896.....	23.77
1891.....	23.70	1897.....	23.44
1892.....	22.95	1898.....	23.78
1893.....	22.46	1899.....	23.19
1894.....	23.52	1900.....	24.16
1895.....	23.28		

TABLE III.
PROPORTIONATE CONTRIBUTION OF EACH AGE GROUP TO TOTAL CRIMINALITY,
PERIODS 1891 TO 1895 AND 1896 TO 1900.

Age Group.	Percentage of Total Criminality.	
	1891-1895.	1896-1900.
9 to 13.....	2.37	2.82
14 to 17.....	9.37	10.20
18 to 21.....	11.45	10.65
21 to 25.....	13.69	14.69
25 to 30.....	14.99	12.07
30 to 40.....	21.15	20.62
40 to 50.....	13.72	14.41
50 to 60.....	7.96	8.23
60 to 70.....	3.74	3.87
70 and over.....	1.03	1.19

(Mario Carrara, *la frequenza e la natura della criminalita infantile*. From *Archivio di Antropologia Criminale, Psichiatria e Medicina Legale*, Vol. XXXVII, 1916.)—A. J. Todd, Minneapolis.

PAROLE.

The Meaning of the Parole Law.—Notwithstanding the wide-spread discussion of the parole law, there is still a general misunderstanding of its meaning and purpose. In many quarters it is still regarded as a form of clemency rather than a method of treatment and a means of supervision.

A number of states still cling to the idea that only those who are first offenders should be paroled, whereas the second or third offender may need the supervision more than the first offender. In many cases first offenders would make good without parole, but repeated offenders are just the ones who need prompt employment, close supervision and the continuous assistance of the state.

A remark recently made by the deputy warden of a certain institution indicates the common attitude. He stated that all men who were any good were paroled from the institution, and implied that it was not worth while to offer any assistance to the remainder of the prison population. As a matter of fact, however, only a small proportion of the men are paroled from that institution, whereas some ninety per cent of the men are paroled from Illinois, Indiana, Massachusetts and other states. About seventy-five per cent of them make good, and yet they are doubtless no better men than those in the institution where the deputy thought nothing could be done with them.

The parole law should never be regarded as a form of clemency or release from punishment. This construction is often put upon not only the parole law, but the adult probation law. The man who is put on probation should not for a moment get the idea that the charge against him has been dismissed. He is still subject to punishment unless he can keep within the law and maintain good conduct.

The great advantage of both laws from the economic standpoint is that when violations occur, the defendant may be sent to prison under probation, or returned to prison under parole without the further cost of a new trial.

It is hoped that judges, prison officials, parole and probation officers and the public in general may come to understand that effective personal supervision will accomplish more for the average offender than incarceration.—F. Emory Lyon, Chicago.

POLICE.

Conferences on Police Administration and Practice in Boston.—At the request of Mayor Rockwood of Cambridge a series of conferences on Police Administration and Police Practice was held for members of the Cambridge Police Department during the period from January 8th to January 18th inclusive.

Five conferences on the general principles and problems of police administration in Europe and America were given by Raymond B. Fosdick, Lecturer in the New York City Police School for Recruits.

Four conferences on police methods and practice were given by Inspector Cornelius F. Cahalane of the New York City Police Department.

All the conferences were held at Police Headquarters, Central Square, Cambridge.

OUTLINE OF CONFERENCES.

I—POLICE WORK IN EUROPE AND AMERICA.

FOR COMMANDING OFFICERS, CAPTAINS, LIEUTENANTS, AND SERGEANTS.

Monday, January 8, at 2 P. M.

MR. FOSDICK.

Policing as a profession—Its growing importance in cities—Police work more difficult in the United States than in foreign countries—Mixed character of our city populations—Legal safeguards which curtail the powers of the police—Emphasis placed by American law upon the liberty of the citizen—Cumbersome legal procedure in America as compared with the procedure in other countries—Delay in American court procedure a deterrent to police effectiveness—The large powers of the German police—Their right to make ordinances—Their right to fine—Their right to control public meetings and the utterances of the press—Their power over discharged prisoners—Inadequate tenure of American police executives as a deterrent to effective police work—Long tenure of office in England—In Germany—In France—In Austria—Politics and the police force.

II—ORGANIZATION OF THE POLICE DEPARTMENT.

FOR COMMANDING OFFICERS, CAPTAINS, LIEUTENANTS, AND SERGEANTS.

Tuesday, January 9, at 2 P. M.

MR. FOSDICK.

Military *vs.* civil conception of the police—Military organization in continental European countries—Civil organization in England and the United States—State control *vs.* municipal control of police—European cities invariably under state control—American cities almost invariably under municipal control—State control of police in Boston, Baltimore, and St. Louis—The organization of London's police department—Its problems—Its decentralized character—The organization of the Berlin department—Its centralized character—Organization of the department in other European cities—Police organization in large American cities—Centralization *vs.* decentralization in police organization—The Italian *Carabinieri* system—The German and French *Gendarmerie* system—Northwestern Mounted Police system.

III—TRAINING OF 'POLICEMEN.

FOR COMMANDING OFFICERS, CAPTAINS, LIEUTENANTS, AND SERGEANTS.

Wednesday, January 10, at 2 P. M.

MR. FOSDICK.

What should a policeman know—Different conceptions of police in Europe and America—Police training schools in London—Berlin—Vienna—Paris—Rome—Liverpool—New York—Chicago—Philadelphia—and other cities—The need of such schools—The sources of police recruits in various European countries and in the United States—Canada—The training of detectives.

IV—THE UNIFORMED FORCE.

FOR COMMANDING OFFICERS, CAPTAINS, LIEUTENANTS, AND SERGEANTS.

Thursday, January 11, at 2 P. M.

MR. FOSDICK.

The duties of a uniformed force—Salaries—Uniforms—Promotions—Discipline—Methods of patrol—In London—In New York—In Vienna—In Berlin—In smaller cities—Control by lieutenants—Control by sergeants—Principles of traffic regulation—Traffic methods in London—In Paris—In Berlin—In Vienna—In New York—In smaller American cities.

V—NEWER METHODS IN THE DETECTION OF CRIMINALS.

FOR COMMANDING OFFICERS, CAPTAINS, LIEUTENANTS, SERGEANTS AND DETECTIVES.

Friday, January 12, from 2 to 4 P. M.

MR. FOSDICK.

Criminal record files—Their fallibility—Europe's long search for an accurate system of identification—The Bertillon system—The rise of dactyloscopy (the finger-print method)—The passing of the Bertillon system of identification—The development of dactyloscopic bureaus—In England—In Germany—In France—In Italy—In Canada—In the United States—The necessity of a national system of identification—The need of an international bureau of identification—Crime indexes and registers—In Berlin—In Vienna—In Dresden—In Munich—In Paris—Classification of photographs in Budapest—In Berlin—Use of photographs in Hamburg—Tattoo and deformity registers—Handwriting registers—Newspaper clipping registers—Classification of crimes by methods—Use of this system in Dresden—The working of this system in England—The German system of police registration (*Meldewesen*) in relation to the detection of crime—Laboratory methods in the detection of criminals—The researchs of Dr. Hans Gross—Of Dr. R. A. Reiss—Of Dr. Alfredo Niceforo—Development of scientific methods in Germany—German "murder satchels"—Relation of physical and

chemical laboratories to the detection of crime—The development of microphotography—The study of the pathology and psychology of criminals in its relation to the detective problem.

VI—METHODS OF PATROL

FOR LIEUTENANTS, SERGEANTS, AND PATROLMEN.

Monday, January 15, at 3 P. M. (for officers on night duty) and

Monday, January 15, at 8 P. M. (for officers on day duty).

Inspector CAHALANE.

The purpose of patrol—Preparation for patrol—Punctuality—Relieving other officers—How to patrol—On which side of the street—Where to patrol in relation to crowds—Danger of being decoyed from post—Precautions in leaving post—Reasons for leaving post—Methods of getting assistance—Methods of answering calls—Method of covering posts during absence of other officer.

VII—DUTIES OF THE MAN ON POST.

FOR LIEUTENANTS, SERGEANTS, AND PATROLMEN.

Tuesday, January 16, from 3 to 5 P. M. (for officers on night duty)
and

Tuesday, January 16, from 8 to 10 P. M. (for officers on day duty)

Inspector CAHALANE.

Powers of observation chief requisite of the man on post—Must train himself to scrutinize and be able to describe faces, dress, walk, actions, and events—Must be able to estimate speed in vehicles—Makes of automobiles—How to describe automobiles—What to observe in passing through a street—Earmarks of suspicious persons—Duties of patrolmen in regard to stores and business places—In regard to residences—In regard to vacant houses—In regard to unoccupied buildings—In regard to street lamps—In regard to dangerous street conditions—In regard to places of bad repute—In regard to nuisances—In regard to intoxicated persons—In regard to detectives seeking information.

VIII—THE MANAGEMENT OF A STATION HOUSE.

FOR COMMANDING OFFICERS, CAPTAINS, LIEUTENANTS, AND SERGEANTS.

Wednesday, January 17, from 2 to 4 P. M.

Inspector CAHALANE.

Cleanliness in attire—Neatness of desk—Attitude toward citizens and subordinates—Use of telephone—Necessity of courtesy and patience with the foreign element and those who cannot make themselves understood—Attitude toward superiors and subordinates—Relations with the uniformed men—Importance of keeping in touch with changes in laws and ordinances, rules and regulations—How to question for the purpose of bringing out material facts—Whom to question—Needless interrogation of persons in front of desk—Searching the prisoner—What to do with property—How to mark it—Importance of observing the prisoner—Unconscious or sick prisoners in cells—Interviewing prisoners in cells—What to do with aided cases—Relation to the station house to the hospital—What to do with children—What to do with female prisoners—What to do in cases of cruelty to animals.

IX—THIEVES.

FOR COMMANDING OFFICERS, CAPTAINS, LIEUTENANTS, SERGEANTS AND DETECTIVES.

Thursday, January 18, at 2 P. M.

Inspector CAHALANE.

Burglars—Their dress—Their methods—Duties of police in connection with burglars—Dutch housemen—Flat thieves and flat burglars and their methods

—Duties of the police in relation thereto—Thieves living in flat districts—Disposal of plunder—Loft burglars and their methods—Prevention of loft burglaries—Safe burglars and their methods—Duties of the police in regard to safe burglaries—Store burglars—Store-window burglars—Vacant house burglars—Use of street-cars by burglars—Burglar tools—Methods of the police in meeting different classes of thieves.

Chief Schuettler of the Chicago Police.—H. F. Schuettler, Chicago's new Chief of Police joined the police force as patrolman on June 13, 1883; was appointed patrol sergeant in March, 1888; lieutenant of police in August of the same year; captain of police in January, 1890; assistant general superintendent of police, November 1, 1903, and was appointed general superintendent of police, January 11th, 1917.

The following is a brief summary of some of the more important cases which he has handled during his connection with the police department.

1. The Dr. Cronin murder case.
2. The Haymarket anarchists.
3. The Adolph L. Luetgert case.

On the night of May 1st, 1897, Louise Luetgert, *nee* Bicknese, disappeared from her home on Hermitage avenue, directly back of her husband's sausage factory, which stood on the corner of Hermitage and Diversey boulevard.

Luetgert did not notify the police until May 8, which aroused Mr. Schuettler's suspicions and terminated with Luetgert's arrest and conviction.

On May 17, Luetgert was arrested and charged with murder. The body of his wife was dissolved in a large vat, on the bottom of which two rings—one with the initials "LL", and seven bones—were found, and some corset steels were found in the furnace.

The first jury disagreed, but the second sent Luetgert to the penitentiary for life, where he died shortly after.

4. The Car Bandits case.

On the morning of August 30, 1903, the car barns of the City Railway Co., at 63rd and State streets, were held up, and Frank Stewart, the night receiver, was killed. William B. Edmond, the cashier, and William Biehl, entry clerk, were shot and wounded. A motorman who was off duty, J. B. Johnson, was also shot and killed. The bandits took \$2257.00 in currency.

Early in November, 1903, information reached Mr. Schuettler that one Marx, had two magazine revolvers, and was boasting that he was wanted for murder. Officers Quinn and Blaul were assigned to locate and arrest him. On November 22, they sighted him in Greenberg's saloon, Robey and Addison streets. Marx killed Quinn and turned on Blaul. His revolver missed fire and Blaul shot him twice, arrested him; and for two days Marx refused to talk. On November 24, he made a full confession to Mr. Schuettler, admitted killing the motorman, Johnson, and implicated VanDine and Niedemier in the robbery of the car barns and the shooting.

Chronology of case: Car Barn Murder, August 30, 1903; Killing of Detective Quinn, November 22, 1903; Confession of Marx, November 24, 1903; Capture of Niedemier, VanDine and Roeski, November 27, 1903; Bandits placed in County Jail, November 30, 1903; Trial of Marx, Niedemier and VanDine began January 10, 1904; Jury completed, February 5, 1904; Bandits found guilty, March 12, 1904; Sentenced to be hung, March 26, 1904; Executed, April 22, 1904.

5. The Mrs. F. C. Hollister case.

Mrs. Hollister was murdered January 12, 1906. Her body was found in an alley, January 13, 1906. Richard Ivans, arrested same day, confessed to Mr. Schuettler shortly after. Trial commenced March 1, 1906. Found guilty and sentenced to death three weeks later. Executed June 22, 1906.

6. The Mrs. Gentry Murder case.

Mrs. Gentry murdered January 6, 1906. Constantine fled from Chicago, January 6, 1906. Arrived in New York, January 7th, 1906. Sailed from New York, February 28, 1906. Landed at Naples, March 15, 1906. Sailed from Genoa, April 27, 1906. Arrived at Buenos Ayres, May 4, 1906. Sailed from Buenos Ayres, June 10, 1906. Landed in Italy, July 15, 1906. Sailed from Genoa, November 16, 1906. Arrived London, November 26, 1906. Sailed from London, January 19, 1907. Landed in New York, January 27, 1907. Arrested, April 2, 1907. Tried and sentenced to life imprisonment in penitentiary, September 17, 1907, where he committed suicide shortly after.

7. Mary Renda Poison case.

The mysterious attempt to poison the family of Frank Renda, which resulted in the death of Mary Renda, 4 years of age, on April 10, 1908, with arsenic, and resulted in the arrest of Renda's boarder, Francisco Nicolosi, who confessed to Mr. Schuettler, after first accusing Mrs. Frank Renda, the mother of the child. The above confession was changed and he admitted the guilt. He was sentenced to the penitentiary for life.

8. The T. Webb case, auto bandit.

January 20, 1913, Webb killed officer Hart while being arrested and escaped. Webb taken and identified, February 4, 1913. On February 10, 1913, Mr. Schuettler got a confession from Claude Rose, chauffeur, who drove Webb in his hold-ups. Webb was sentenced to the penitentiary.

Wesley H. Westbrook, First Deputy Superintendent of Police of Chicago.—The new First Deputy Superintendent of the Chicago Police force was born February 20, 1875 in Hamilton County, Nebraska, near the town of York. His father was a Civil War veteran. His mother belonged to a New York family that was prominent in the abolitionist movement.

When the First Deputy was 16 years old, the family moved to Wright County, Missouri, where he lived three years before he went to Texas, where he worked at picking cotton and other like occupations. In the fall of 1895 he came to Chicago to get an education with the intention of finally becoming a lawyer. He went to high school for a while, and supported himself as best he could. Owing to sickness and other unfortunate occurrences, it became necessary for him to secure a position. One day when he called at the police station for his newspapers that he was delivering on a route, a burly policeman was bragging that he could throw anyone in the station. The Captain jokingly said that here was a little newsboy that could throw him. The policeman replied that the newsboy was not very little but he could not accomplish the feat. A test of strength in a wrestling match was indulged in in the squad room in the station and the newsboy won out. The Captain suggested that he take the examination for patrolman that was soon to be held. The First Deputy was greatly in need of a job and he acted accordingly, and was chosen as one of 45 out of some 900 applicants and was sworn in as a patrolman on December 14, 1896.

On April 26, 1898 he enlisted in the First Infantry for the Spanish-American War and was sent to Cuba. On his return he was sick with fever and chills until about 1900. From 1900 to 1903 he studied law at the Illinois College of Law, now associated with the De Paul University.

His advancements have been as follows: made Sergeant in 1905, Lieutenant in 1912, Captain in 1916 and First Deputy Superintendent in 1917.

Since he has been in the Department, he has worked as patrolman traveling a beat, in Schuettler's office on gambling, obscene pictures and literature, worked out of the detective bureau for six years, and while there he was detailed part of the time as drill master of the Department and as shooting instructor.

In 1910 he joined the Second Infantry and was elected First Lieutenant, and resigned after two years.

In the early part of 1913 he was made Director of Instruction of the Police School and remained there most of the time for two years. While he was Director of Instruction at the Police School, he revised the record books of the Department, about 28 in all, and during his stay there about 700 men passed through the school.

From the time he was made Lieutenant in 1912 until he was made First Deputy in 1917, he was transferred some 15 or 16 times from one station to another.

Probably the most spectacular and dangerous piece of work that has been done by the First Deputy was the capture of a crazed negro in July, 1916, when he was Captain at Warren Avenue Station.

PRISONS.

Forward Steps in the Missouri Penitentiary.—The Missouri State Prison at Jefferson City, in the midst of its unsolved industrial problem, may, nevertheless, be said to have joined the ranks of progress in prison reform. In the first place the appointment by Governor Gardner makes the administration a matter of statesmanship rather than one merely of discipline, as heretofore.

Mr. Painter had just completed a term as Lieutenant Governor and as a foremost citizen of the state and legislature, he had long been active in corrective legislation. Although as yet he is quietly studying the situation, he has already inaugurated definite plans for improvement. Among these may be mentioned an opportunity for out-door recreation, which has heretofore been denied the inmates of this largest penal institution of the United States.

Former Warden McClun had secured an enlarged area within the prison wall, and the additional space will now make possible weekly exercise, drill, recreation and games. Warden Painter is also planning a prison school for the first time in the history of the institution. He has found that of the 2,700 inmates, a very large proportion are entirely illiterate, and a comparatively small per cent have gone beyond the elementary grades.

Furthermore, beginnings are being made looking toward a measure of self-government of the citizens of this "Peaceful Village," as the Warden has styled the population within the walls. The inmates were asked to elect from their number a delegate for each section of the various cell blocks to represent them in plans for a gradual modification of the rules of the institution. This "Advisory Board of Delegates," on the 17th of February, formulated their first

statement of purpose, and on the following day in chapel, their statement was read to the assembled populace, setting forth constructive plans for the welfare of the institution, and asking co-operation for the mitigation of some of the rigors of prison life.

If to this well conceived plan for improvements may be added intelligent legislation to provide adequate employment for the prisoners, then we may look for rapid advancement toward an efficient and harmoniously organized prison.

And with this new spirit pervading the institution, it is hardly conceivable that the practice can much longer continue of "stretching up" prisoners as a punishment, as is now done. Nor does it seem probable that this great state will much longer allow its prisoners to be discharged, except first offenders, without any discharge fee with which to make a new start in life.

These short-comings are quite sure to be remedied, and many good things may be looked for under the promising leadership of Warden Painter.—F. Emory Lyon, Chicago.

PROBATION.

New York State Probation Commission.—Greater use of probation for offenders in all classes of courts, more salaried probation officers at work, more persons under their care, and better results than in any year before, are the outstanding facts in the Tenth Annual Report of The State Probation Commission of New York just submitted to the legislature of that state.

The total number of persons, including children, placed on probation during 1916 was 19,686, one thousand more than in 1915. At the end of the year there were on probation 13,433 persons, one-third of them children. This was 13 per cent more than the number one year previous. There are now 189 salaried probation officers at work in New York besides 171 volunteer officers.

That there is a close relation between the use of probation in the courts and the prison population is shown by the fact that since probation began to be generally used, about ten years ago, the population of the state penal institutions has not kept pace with the growth in the general population. During 1916, while there was a large gain in the use of probation, the state prisons decreased in population by 348. Elmira Reformatory's population decreased from 1,279 to 818. All other reformatories, penitentiaries and jails showed a decrease in population during the year. Undoubtedly probation, which substitutes a period of discipline and watchful supervision by the probation officer for confinement in prisons and reformatories, is now getting in its effect.

Most first offenders are tried out on probation; they do not come back. In 78.3 per cent. of all cases finishing probation last year, the probationers complied with all conditions and were reported discharged with improvement. In 11.4 per cent. they were re-arrested and committed; in only 4.8 per cent. they absconded or disappeared from supervision.

The probation officers last year investigated 27,462 cases before sentence, and made a total of 96,851 visits to the homes of probationers. They actually handled \$209,514, of this \$139,155 was paid to families of men on probation for their support. The remainder was for fines and restitution to injured parties, all collected by probation officers in small installments out of the

probationers' earnings. In addition to the money actually handled by the officers, they supervised the payment of \$403,049 for family support. About half of this was collected by the Department of Charities of New York City from persons on probation, the payments being checked up and enforced by the probation officers.

Out of sixty-two counties of the state, thirty-five now employ probation officers. Out of fifty-eight cities, nineteen employ probation officers and eighteen others use salaried county officers. The county system, with a central office serving for several courts in the county, has proven most successful.

The Probation Commission receives monthly reports from every officer in the state, and publishes full statistics. Representatives of the commission visited and investigated probation work in ninety-seven courts during the past year. Many improvements were brought about as a result of these investigations. Campaigns for securing new officers were carried on by the commission in eight counties and seven cities. The commission conducts annual conferences of probation officers and of the magistrates of city and village courts each year. It acts as a clearing house for information on probation work.

The following recommendations for improving the work are made in the report:

1. That every city and county should secure the services of one or more salaried probation officers appointed under the civil service. Small cities and villages should obtain the services of salaried county officers.

2. That a sufficient number of officers be employed in every court so that no officer should be required to supervise more than fifty probation cases at any one time. Wherever possible, both male and female officers should be employed.

3. That salaries of probation officers should be made more adequate. The officers should be given proper office quarters, clerical help and traveling expenses, so that they may cover their territory and give their cases close supervision, thus getting more effective results.

4. That persons be not placed on probation who are feeble-minded, confirmed drunkards and habitual offenders. Provision should be made for all courts to secure the services of physicians, trained in the study of mental defects, to examine all delinquents. In the large courts well equipped psychopathic laboratories should be established. The state is urged to make proper provision for the special institutional care of the feeble-minded.

5. That the work of courts dealing with domestic relations and children's cases be brought as closely together as possible and that such courts be given broader jurisdiction to deal with cases effectively without convicting them as criminals.

6. That probation officers constantly endeavor to come into close and intimate contact with their probationers, visiting them frequently, securing employment and otherwise assisting them. That they investigate all cases in advance and keep more complete records of their cases.

Largely as the result of the extending use of probation and its more successful application, the population of the state penal and reformatory institutions has not kept pace with the increase in the population of the state. Compilation of figures secured from the State Prison Commission and the State Board of Charities shows that the total population of all penal and

reformatory institutions in the state increased from 18,454 in 1908 to 20,413 in 1916, or 10.6%. From census returns it is estimated that the population of the State increased 12.7% during this period. During the same period the number on probation increased 412%. The last complete figure for institutional population is for June 30, 1916. Since that date there has been an actual and remarkable decrease in prison population.

Good times and plenty of employment account for part of the recent decrease but the New York Commission states that it believes and the institutional heads generally believe that the effect of probation is now apparent and that the decrease will be permanent.

Inasmuch as it has been found that the average per capita cost of a year's maintenance in penal institutions of the State is \$219.63 and the average cost of a year's probation, including all salaries and expenses of probation officers and appropriations to the State Probation Commission, is \$21.94, the economy of probation is evident. These figures, however, are for maintenance alone and take no account of the immense cost to the State for construction of institutions.—Joel D. Hunter, Chicago.

Illinois Plans for a State Commission.—At the semi-annual meeting of the Illinois Probation Officers Association (a non-public association) a committee of five was appointed to prepare the necessary bills to create a State Probation Commission for Illinois; the committee being instructed to report to the executive committee of the Probation Officers Association.

Since the committee has been appointed the Illinois legislature has passed Governor Frank O. Lowden's Civil Administrative Code. This Code eliminates all the State Boards and Commissions which in the last few years have controlled the penal and charitable institutions of the state and places these institutions under the Department of Public Welfare. One of the problems which will undoubtedly early engage the attention of those in charge of this department will be the probation work of the state.—Joel D. Hunter.

The Philadelphia Municipal Court.—Mrs. Jane D. Rippin reports that the Philadelphia Municipal Court is organizing a separate group of women to work with the colored offenders because that branch of the work has become more complicated lately on account of the large increase in the migration of colored people from the south.

The Philadelphia Municipal Court has also obtained an abandoned school from the Department of Education. This school has been remodeled, the first floor being converted into a court room and offices for the probation officers, clerks of the court, etc. The second floor is devoted to clinical work and also has treatment rooms for cases of both physical and mental disorder. The third floor is used as a shelter for the women and girls.—Joel D. Hunter.

Smaller Number of Cases in Los Angeles.—Mr. Harold K. Vann, Chief Probation Officer of the Juvenile Court of Los Angeles County, reports that the number of cases in the Juvenile Court have been reduced in the following ways: "(a) by assigning to other agencies those cases which should be handled by them rather than the Probation Department; (b) by eliminating cases carried on the books where wards had passed completely from jurisdiction both as to time and residence; (c) by compelling certain wards to assume the responsibility, for their own good, of walking alone, supporting themselves, and depending on their own resources rather than leaning so

heavily upon the probation officer; (d) by dismissing from probation those who had in every way made good and seemingly would stay good and who desired as a reward to receive a clean record, yet who because they had been placed on probation until 21 were still being carried. In all of the above cases the steps taken have been very satisfactory and while in a few cases we had to take back those who were allowed to go, yet in a very great majority our judgment was sustained. Through the above methods the number on probation has diminished as follows:

On probation July 1, 1914.....2,539

On probation July 1, 1916.....1,795

The number of cases in court has also been lessened:

The number of new cases 1914.....1,681

The first six months 1916..... 588

This makes a total for the year of 1,176. This is a reduction of 505 cases. That this reduction is due to our methods is shown in the fact that all fields of complaint give a proportionate falling off. Four leading fields show the following comparisons:

	1st 6 mos. 1915.	2nd 6 mos. 1915.	1st 6 mos. 1916.
Police	395	349	303
Other Parties in City & County.....	171	169	107
Parents	62	62	39
Humane Society	61	26	3

This result comes, (a) from better probation work, emphasizing probationers' opportunities and keeping in closer touch with the wards, (b) by securing closer co-operation with the family and other interested agencies, (c) by presenting to the public through a number of our officers in the way of lectures the needs of the home and the child and the necessary co-operation with the law and our department. These have averaged one a week throughout the year and have been given before such bodies as the Parent-Teacher Association, Churches, Women's Clubs, Father and Son meetings, Brotherhood meetings, Boys' Clubs, Fraternal Organizations, Business Men's Clubs, Young People's organizations in churches, Social Economics Class University of Southern California, etc.; (d) by handling in our own office and in the complaint department cases which would otherwise have come into court and adjusting matters to the satisfaction of all concerned. Personally, I have handled some thirty cases during the month of August in this way, which would otherwise have come into court."—Joel D. Hunter.

MISCELLANEOUS

Annual Meeting of the National Committee for Mental Hygiene.—The ninth annual meeting of the National Committee for Mental Hygiene, Inc., was held February 7th at the Hotel Biltmore.

Mr. Otto T. Bannard, treasurer, announced that gifts amounting to more than \$30,000 for general expenses had been contributed during the past year by four donors, one of whom had pledged \$100,000 toward an endowment fund that is being raised. The Rockefeller Foundation contributed \$34,000 for special purposes, such as surveys of conditions among the insane and feeble-minded.

Short addresses were given by Dr. Walter E. Fernald on "Supervision of the Feeble-minded in the Community"; Dr. William A. White, "Influence of Mental Hygiene Upon Methods of Dealing With Crime and Criminals"; Dr.

William L. Russell, "Some of the Indirect Results Which May Be Expected to Follow Our Surveys of the Care and Treatment of Mental Diseases"; Professor William H. Burnham, "The Role of Mental Hygiene in Education"; Dr. E. E. Southard, "The Community as a Unit for Mental Hygiene Work"; Dr. Henry R. Stedman, "The Teaching of Mental Hygiene in Medical Schools."

Dr. Thomas W. Salmon, medical director, Dr. Frankwood E. Williams, associate medical director, and Mr. Clifford W. Beers, secretary of the committee, reported on the work of the past year. Surveys have been completed in the states of California, Colorado, Connecticut, Georgia, Louisiana, Pennsylvania, South Carolina, Tennessee, Texas, and Wisconsin, and are now in progress in the cities of Chicago and New York. States' societies for mental hygiene are now organized in sixteen states, while steps have been taken towards the organization of societies in several other states. During the coming year emphasis will be laid upon the educational work of the committee. A feature of this work will be the publication of a quarterly journal, "Mental Hygiene," the first number of which was issued during the past month.

The following officers for the ensuing year were elected: Dr. Lewellys F. Barker, president; vice-presidents, Prof. Charles W. Eliot, Dr. William H. Welch; treasurer, Otto T. Bannard; medical director, Dr. Thomas W. Salmon; associate medical director, Dr. Frankwood E. Williams; secretary, Mr. Clifford W. Beers; executive committee, Dr. August Hoch, chairman; Dr. George Blumer, Prof. Stephen P. Duggan, Dr. William Mabon, Dr. William L. Russell, Dr. Lewellys F. Barker, Dr. Walter E. Fernald, and Mr. Matthew C. Fleming; finance committee, Prof. Russell H. Chittenden, chairman; Mr. Otto T. Bannard, Mr. William J. Hoggson, Dr. William B. Coley.

CLIFFORD W. BEERS, Secretary of the Committee.

Illiteracy and Crime.—The bright little Joliet Prison Post, a review edited by the prisoners of the Illinois State Penitentiary, speaks its mind about illiteracy and crime in this sane and interesting manner:

"One of the most popular, but highly erroneous, beliefs of the day is that illiteracy and crime are closely allied. It is customary to plead for a wrongdoer that he did not enjoy the advantages of an education when young. Accepting this view authorities are installing schools in state prisons and reformatories. Quite recently a survey was made of the prisoners in the Ohio State Penitentiary, which served to upset some of the cherished notions concerning them.

In a total population of 1,886 it was found that 1,181 had received the major portion of their elementary education, and only 309 were illiterate. There were 26 university graduates on the rolls and 106 high-school graduates. The survey was made by a man convicted of forgery who was educated at Lake Forest College, near Chicago. There were other novel discoveries. For instance, 31 of the prisoners were total abstainers in the matter of drinking liquor, and 701 asserted that they drank in moderation. Intemperance was admitted by 1,148. Marriage, apparently, made no difference, as the prisoners were about equally divided in respect to social condition. The survey indicated that it was not illiteracy so much as dependency that caused the young to adopt a criminal life. Of the whole number of prisoners, 982, or nearly 50 per cent, began to earn their living before they were 15 years old; 770 were self-supporting between 15 and 20, and only 22 were older when they began to work for gain.

Nor are the moral senses of confirmed criminals blunted. Of all those

examined only one justified law-breaking, a junk dealer, who bought stolen goods. The rest admitted a sense of wrongdoing. It is rather unpleasant to demolish hypotheses, such as the belief in illiteracy as an impelling cause of evil. They are so soothing and furnish many opportunities for good works on the part of sympathetic reformers."

It is to be hoped that the editor of the *Prison Post* will send a marked copy of the review to those senators and congressmen who think the illiteracy test will solve the immigration problem.—Joseph Matthew Sullivan, Boston, Massachusetts.

National Conference of Charities and Correction.—The prominence of penology in the proceedings of the National Conference of Charities and Correction, which the second half of its title indicates, is well justified this year. The outline of its program for the meeting at Pittsburgh, June 6-13, is sprinkled through with discussions relating to crime. Thomas Mott Osborne of Auburn, New York is chairman of the committee on corrections. According to the plans of this division, the leading addresses will be made on the subject, "Broader Aspects of the Prison Problem." Supplementary section discussions will be devoted to the three logical parts of the modern prison reform movement, "Diagnosis," "Remedy," and "Result." An additional meeting will be devoted to discussing the technique and problems of administration of colony farms.

Alcohol and drug inebriety will come up for treatment in the division on mental hygiene, of which Dr. Owen Copp of Philadelphia is chairman. "The Gathering of Moral Forces" is scheduled by Robert A. Woods of South End House Boston, as one of the main topics of the division on community programs. The National Probation Association will meet at Pittsburgh at the time of the Conference. One of its leading features will be a report on the work of courts of domestic relations. Separate sessions will likewise be held of national organizations of police women and of police matrons.

Thirty-five hundred delegates are expected to attend this series of meetings. They will occur under the presidency of Frederic Almy, secretary of the Charity Organization Society of Buffalo. He has announced as the subjects of his presidential address "The Abolition of Poverty." The prevention of human distress has been adopted as the main objective of the discussions of the Conference.

Boston Saloons Out of Politics.—"The police are the eyes, ears, hands and feet of the licensing board in handling Boston's saloons."

That is the declaration of Police Commissioner O'Meara, and in voicing this idea he repeats practically word for word similar sentiments given tongue by Mayor Curley and by Secretary Epple of the licensing board.

Much of the success claimed for the way Boston's saloons are handled Commissioner O'Meara attributes to the close co-operation prevailing between the licensing board and himself. In fact, the police commissioner states frankly that he believes it essential to the satisfactory working of the present license system in Boston that the licensing board and the official in charge of its "eyes, ears, hands and feet" work hand in glove.

Stephen O'Meara, Boston's commissioner of police, ought to know whereof he speaks. He has been at the head of the police force here ever since it has possessed a single head. That is eleven years. He is now serving his third term of five years, having been reappointed last year by the present governor,

a Republican. Six years ago he was reappointed by a democratic governor. His first appointment came to him when he was in Europe, where he had gone with his wife after his retirement from business following the sale of the Boston Journal, of which he was editor and publisher.

"If either the police commissioner or the license commisisoners were crotchety and quibbling a jolt would come quickly in the machinery of saloon supervision," declared Commissioner O'Meara. "Cordial co-operation is essential, and we have it.

"The police captains have orders to watch the way saloons, hotels and other liquor licensees obey the liquor law and carry out the regulations of the licensing board. All infractions they report at once to me and I send duplicate reports to the board."

Commissioner O'Meara turned up a stack of reports which lay on his desk.

"Here are some reports from the stations which have just come in," he said. "A saloonkeeper has had a door opened through a partition. All changes in the interior of a saloon must first be approved by the licensing board. Inasmuch as the captain has not been notified that any permit has been granted for a door where there was no door before he makes haste to report.

"Here is another report on the number of rooms and other qualifications of a place which the owner wants to open up as a hotel. He has a saloon on the ground floor. Such places we scrutinize very carefully. The report shows this place has only sixteen rooms. That isn't enough."

Commissioner O'Meara laid aside his sheaf of reports and continued:

"Given harmony between the police force and the licensing board, I doubt much whether any system of saloon regulation superior to Boston's and applicable to a big city has yet been found. It is safe to say that Boston has separated its saloons from politics."

That the licensing board possesses ideas similar to the police commissioner's as to the desirability of co-operation is shown by the following extract from its annual report just published:

"We wish heartily to thank the police department, acting through Police Commissioner O'Meara, for its willing and active assistance. Such assistance is, of course, provided for in the act by which the board is constituted, but the commissioner has gone further than heretofore in investigating and reporting the conduct of the licensees."—Warren Phinney in Chicago Daily News, Jan 18, 1917.

REVIEWS AND CRITICISMS

A HISTORY OF CONTINENTAL CRIMINAL LAW. By *Carl Ludwig von Bar*. Translated by Thomas S. Bell and Others. Boston: Continental Legal History Series Vol. 6. Little, Brown and Company. 1916. Pp. lvi. 561. \$4.00 net.

This book is the sixth of eleven volumes in the Continental Legal History Series published under the auspices of the Association of American Law Schools. The importance of the series to students of comparative law and legal science in the United States is to be gauged by the fact that this work embodies translations of the writings upon continental civil, criminal, procedural, and public law by the ranking European scholars in this field. Until now there has been no work available in English which afforded a survey of the historical development of continental law. To the criminologist and the sociologist, to all interested in changes in criminal law and procedure and in the reforming of prison conditions and methods, this volume on the History of Continental Criminal Law is undoubtedly the most valuable of the series. The fifth volume, entitled *History of Continental Criminal Procedure*, should be mentioned as probably next in importance from this standpoint.

The publication in English of these two volumes is timely. Recent tendencies in this country, both in the field of criminology and penology, foretell a revolution in our conception of crime, in criminal law and procedure, and in the treatment by society of the offender. The value of the scientific study of the delinquent by psychological methods, exemplified best, perhaps, by Healy's book, *The Individual Delinquent*, has led to the establishment of a growing number of psychopathic laboratories in connection with courts and to a recognition by judges, by probation officers, by superintendents of penal and reformatory institutions, and, in a less degree, by the general public, of the importance of examination by physician and psychologist of the physical and mental status of the individual offender. In criminal procedure and treatment of crime we have witnessed the separation of child from adult delinquency as evidenced by the rapid development of the juvenile court, the probation system, and the state industrial schools for boys and girls. For adult offenders, probation, the indeterminate sentence, the parole system, are now part and parcel of our criminal procedure and penal methods. At the present time, the trend in the further practical application of the reformatory principle to the treatment of delinquents is evolving experiments with the so-called "honor systems" and the "limited self-governing" plans. In a time of transition when old conceptions of crime, punishment, and reformation are either being discarded or are undergoing the chaotic process of revision and re-interpretation, there is point in gaining historical perspective from the comparative study of the development of conceptions of crime and criminal law in Western Europe.

The editorial preface by Professor John H. Wigmore gives an excellent statement of the scope of the available sources for the history of continental criminal law, an enumeration of the books and essays

translated for the volume, and a brief biographical sketch of the authors and the translators. It can be quite justly stated that the *History of Continental Criminal Law* as presented to American and British readers is built around Professor von Bar's work entitled "Geschichte des deutschen Strafrechts und der Strafrechtstheorien." As suggested by this title the book falls into two main parts: the first, comprising about four hundred pages, deals with the "General History of Criminal Law," and the second of one hundred pages with the "History of the Theories of Criminal Law." An appendix of fifty pages is devoted to von Bar's "Critique of the Theory of Criminal Law."

The leading place given to von Bar's name on the title page is justifiable not only because the major portion of part one and all of part two and the appendix are translated from his book, but also since the organization of his material, originally concerned with Germany alone, makes possible the incorporation of the selections representing the development of criminal law in France, Switzerland, Scandinavia, and the Netherlands. The exclusion of Italy is due to no oversight, but to the fact that the history of the Italian criminal law is adequately treated in the volume in the series which has for its subject matter the general history of Italian law.

The scope of the first and major part of the book, dealing with the general history of criminal law, is indicated by the titles of its five main divisions: I. The Roman and the Germanic Elements; II. The Middle Ages; III. The Renaissance, the Reformation, and the 1700s; IV. The French Revolutionary Period; V. Modern Times.

The selection of Roman criminal law as the point of departure for the historical survey of the field presents, at least on first reflection, a serious genetic difficulty. Would it not be preferable to begin with the analysis of the more primitive Germanic communities rather than with the culturally advanced Roman society? Regardless of an affirmative or negative answer to this question, there is a consideration of weight which supports von Bar's method of procedure. Roman criminal law as the starting point affords unity of treatment. The history of continental criminal law centers consequently, about the imposition of the Roman law upon the native criminal system. The interaction of these two elements, the Roman and the indigenous, with reference to the life conditions of various continental peoples provides an integrating and unifying principle.

The contrast between Roman and German criminal law is clearly and incisively made by von Bar. The Roman criminal law is an expression of the conception of the absolute subordination of the individual to the state. "The individual has no rights which the State is bound to respect." (P. 17.) The common notion that Roman law tended to give the individual a degree of independence relative to the state is effectively demolished by von Bar. In the primitive Germanic criminal law the rights of the individual as against the state are recognized. The law is not so much statute as an ideal standard to which both state and individual conform. This distinction between

the Roman and Germanic conception of law is not regarded by von Bar as ethnically but as socially determined. He gives a terse description of the process by which the exigencies of the struggle for existence of the Roman city-state, as well in its beginnings as in the course of its growth, made imperative the subserviency of the individual to the group. "The small Roman community, surrounded as it was by many enemies, regarded the murder of one of its citizens as an attack upon its own strength and prosperity, and as a breach of the duties owed to it by the individuals" (p. 16). The organic nature of the development of criminal law from this principle is exhibited in the imperial period in the growing severity of punishment, in infamy and confiscation of property, in the increasing range of criminal law, in the crime of *lese majeste*, and in the persecution of the Christians.

So much by way of detail for the two contrasting conceptions of crime and the criminal; the interaction of these two elements as modified by the circumstances of the historical situations of European nations provided the central process for the development of continental criminal law.

In contrast with the sophisticated Roman conception of crime as an offense against the public welfare, stands the naive primitive principles of vengeance and self-defense. Von Bar takes the position that the community is interested in the crime only in so far as arranging the terms of peace between the offender and the person injured, and for that reason, perhaps, rejects Wilda's theory of outlawry as the most primitive form of punishment. Interesting outgrowths of the Germanic attitude to crime are found in the little attention given to the element of intention and the tendency to augment the punishment where the element of secrecy accompanies the offence.

The Middle Ages, both in Germany and in France, are characterized by the impress of the Christian church upon the criminal law. Its influence is marked in many ways; among others, by the acquisition by the church of temporal jurisdiction, the harsh penalties against heresy, and the partial adoption by the criminal law of the Mosaic code. While, in the main, von Bar condemns church control as prejudicial to the functional development of criminal law, he points out its contributions as, first, the idea of an absolute objective law and order superior to individual rights, and secondly, the idea of reformation. (P. 94.)

The 1500s mark the reception of the Roman law in Germany and culmination of the study and application of its principles in France. Historical circumstances contrived to make the outcome radically different in the two countries.

The reception of Roman law in Germany was in reality a combination of the Roman with the German elements demanded by the maturity and complexity of life. The simple maxims fitted for the freedom of life in forest and village were archaic with reference to city conditions. First, the influence of the law-books of Italian jurists and, then, the *Bambergensis*, textbook and code in one, and, finally, the "Carolina" which was enacted into imperial law in 1532, brought

about a general introduction into Germany of the principles and procedure of Roman law.

In France, in contrast with Germany, the dominance of Roman law was absolute since it met with little or no obstructions. With the centralization of political power in the hands of an absolute monarch the royal judge trained in Roman law exercised a discretionary power of arbitrary character. The criminal law in France had not the nature of an organic growth from the life of the people, but that of a structure superimposed. Concretely, "the official judge and the official prosecutor alone had the power to declare what was crime and to say what penal consequences should follow the act so declared to be crime." (P. 263.)

The Reformation in Germany according to von Bar led to retrogression because of the re-introduction of theology and of the principles of the Mosaic code into criminal law. The radical changes in criminal law in the 1700s and the French Revolution represent a reaction against the ideals of Roman law as a resultant of existing conditions and the prevailing philosophy of the time.

In France, the writings of Beccaria, Montesquieu and Rousseau, prepared the way for a complete transformation of the criminal law. The Code of 1791 sought to put into effect two principles: prohibition only of acts injurious to society and the impartial infliction of strictly necessary punishments. In its reaction from evils connected with the unlimited power of discretion the code went to the other extreme and abolished the executive power of pardon and of commutation of sentence, and prescribed specific and unalterable penalties for offences.

In Germany the changes in criminal law in this period are also related to the "trend of the times." The reaction of Grolmann and Feuerbach against Pufendorf's theory of moral responsibility as based on the assumption of human freedom, gave rise to a specialized literature in the questions and problems of criminal law and criminal procedure. The work of Feuerbach, as legislator for Bavaria, found practical expression in the Bavarian Code of 1813, which served as a model for criminal legislation in the German states at the close of the years of French supremacy.

In the period denominated "Modern Times," or from 1800 in France and 1813 in Germany, the development of criminal law in the two countries, though conforming to the same general trend, has presented definite divergent tendencies. In France the Penal Code of 1791 was superseded by the Penal Code of 1810 which remedied the outstanding defects of the former and sought "to secure the defense of society by means of intimidation." (P. 337.) The chief reforms of the French penal law since 1810 are grouped under five principles: "mitigation of penalty; the development of the principle of extenuating circumstances; the extension of the application of the Penal Code; the reform of the offender through punishment; the principle of social defense, as involving the distinction between first offenders and recidivists." (P. 339.)

In Germany the changes in criminal law, while also reflecting the spirit of the times, have been profoundly influenced by the processes of political unification. Evidence of this is at once apparent in the number of successive codes, or drafts for codes, which register the stages in German union: the Prussian Code of 1851; the Bavarian Criminal Code of 1861; the 1869 draft of a Criminal Code for North Germany; the Code of the North German Federation, which became the code of the empire; and the Draft Code of 1909. Von Bar points out that "the new institutions of the German Empire and the needs of business rendered necessary a considerable number of special provisions in the nature of police regulations;" at the same time, he is guardedly critical of the statutes dealing with the press, traffic in food supplies, and usury as difficult to square with the theory of criminal law. (P. 361.)

The second part of the book entitled "History of the Theories of Criminal Law," is an analytical statement and comparison of the theories of criminality from the Sophists to Binding. However, since it ends in Germany with 1880 and in other European countries with 1850, it takes no account of the modern movement introduced by Lombroso, Ferri, and Garofalo. In the appendix is presented von Bar's critique of preceding theories of criminal law and an exposition of his own theory of moral disapprobation as the fundamental basis for criminal law.

This fragmentary resume of the subject matter of the volume is probably sufficient to indicate the scope, point of view, and the authority of the work. It will, therefore, not be out of place to suggest one or two of its deficiencies or limitations. The outstanding shortcoming is the almost total ignoring of the developments of the last thirty-five years. Though von Bar's work appeared in 1882, he wrote to the editorial committee in 1911 that "the later investigations have not been such as to give me any reason to make any substantial changes in the text."

The limitation of the work is ably stated by Professor Wigmore in his editorial preface; "An ideal history of the criminal law should cover three fields: First, the history of *criminal law in general*,—its moral and political ideas, its legislative movements, its general legal doctrines, and its penal methods; secondly, the history of *specific crimes* as defined by the law; and thirdly, the history of *crime* itself,—its practices, methods, and causes. But no such ideal history exists in print,—nor in prospect for some time to come."

That von Bar's work falls short when measured by this standard is no criticism, it is only a realization of its necessarily limited scope and aim. It has the value and the deficiencies of all studies of the historical and comparative type. At any rate, the presentation of continental criminal law as an organic growth from the accommodation of the two principles, Roman and Germanic, modified successively by the influence of the Christian Church, national development, the French Revolution, and the modern humanitarian movement indicates that changing circumstances involve changes in function and structure. Is

not, then, the present scientific study of the offender a fact of import in the future evolution of criminal law?

The editorial committee merit high commendation for its success in the difficult task of the selection, the organization, and the translation of materials, and for the workmanship of the undertaking.

University of Chicago.

ERNEST W. BURGESS.

SOCIETY AND PRISONS. By *Thomas Mott Osborne*, L. H. D., Yale University Press, New Haven, Connecticut, pp. 225, \$1.35 net.

This volume is the published "Yale Lectures on the Responsibilities of Citizenship," given by Mr. Osborne two years ago and issued during the last year.

The book sets forth the rather well-known ideas of this prison reformer more fully than his previous story giving his experiences in Auburn Prison. The literary style is equally interesting and versatile. While not claiming to be a scientific or historical treatise on penology, it does set forth in some detail the progress of prison reform during the past century. In an added note of apology for the imperfections of the publication, the author truly states "there is a gap at present in our literature of penology which this book will serve to fill until a better one be printed."

To the charge which has sometimes been intimated, that Mr. Osborne is a sentimentalist, we may find answer in such a statement as this: "We must hold a man closely responsible for his crime, for that is the way to prevent repetition, and it also gives a chance to educate him to a better outlook on life." At another point the writer says, "May I again urge the fact that I do not for a moment lose sight of the wickedness and folly of which these prisoners have been guilty. With the exception of a very few innocent men, they fully deserve the exile from society to which they have been condemned." He then adds, "What I wish to emphasize is the existence of the criminal's essential humanity. The blasphemous theory of the irreclaimable criminal, foreordained to a life of wickedness and social perversion will break down completely, whenever it is honestly tested." It is the belief of Mr. Osborne that the prison system of the past, and largely of the present, does not give proper recognition to human considerations.

He emphasizes the fact that the only effectual punishment which society can inflict upon men lies in sending them to prison. This, he believes to be the "direst punishment that can be meted out to any man." His experience indicates that men who are guilty do not resent this impersonal punishment on the part of society. It is only the additional tyranny and brutality exercised by officials or keepers, some of whom may not be much more intelligent or virtuous than the offender. He feels that the injury of all such forms of punishment is the inevitable outcome of arbitrary and irresponsible authority of some human beings over others.

He speaks of this as "a relation which has most disastrous effects

in both directions. It not only turns the punished into wicked and revengeful wild beasts, but it turns the punisher, a good intentioned man, into an arbitrary and cruel tyrant."

The author urges that the purpose of imprisonment should not be to make "good" prisoners, but to make good citizens. In order to do this it is held that they must not only learn to *think* right, as was originally erroneously supposed to be accomplished by the solitary system, and to *act* right as they have been compelled to do under the congregate prison system, but, most important of all, they must be given an opportunity to *feel* right towards their keepers and towards society in general. When this is accomplished, they are much more likely to think and act right after their release.

After developing these considerations by a comparison of the old with the newer standpoint in prison administration, Mr. Osborne describes in detail the organization and development of the "Mutual Welfare League" in Auburn Prison, and later in Sing Sing. The author apparently considers the principle underlying this League with its basis of self-government of greater importance at this time than any other matter of prison administration. Speaking of its advocates he says: "They believe that the true foundation of a new and successful penology has at last been found." His argument for self-government as a true basis of responsibility is quite convincing, especially if one does not bring into the consideration other important factors of prison life.

Nothing whatever is said, for instance, about the efficient business management of a prison, of adequate industries, of the orderliness and cleanliness of an institution, and many other factors which would seem to be essential in the training of men for future good citizenship.

The great virtue of the self-government theory is clearly shown to be in giving an opportunity for individual development. Mr. Osborne states, "that while liberty alone fits for liberty," no privilege should be granted to prisoners without imposing a corresponding responsibility. He believes that practically all inmates of a prison will respond to this imposition of responsibility.

He discounts entirely the growing conviction on the part of most other observers in this field that a considerable proportion of prisoners are below normal mentally. He admits considerable variation in mental ability and attainment, but says, "To talk of any large proportion of convicts being mentally deficient is the sheerest nonsense." He attributes most of the obvious peculiarities of offenders to the bad effects of imprisonment, though this would apparently not explain the foolish things often done by first offenders under probation.

In any case, the system of self-government in practice would apparently give a better opportunity for the discovery of individual possibilities than the routine methods of a more centralized control. It might lead society to see, as the author of this books says, "that every man who is in need of reform, requires a different treatment from all other men."

Giving further value to the self-government method of prison administration, it is recognized that the same system of individual responsibility must be extended beyond prison walls, if penal institutions are to be greatly improved. As the author says, "it is, after all, the frightful insincerity and falseness and corruption of our politics that form the most fertile source of crime."

Chicago.

F. EMORY LYON.

A STUDY OF FAMILY DESERTION. By *Earle Edward Eubank*, Ph. D.
Published by the Department of Public Welfare, City of Chicago,
1916. Pp. 73.

All things considered, this is by far the broadest study of family desertion yet undertaken. It includes a brief historical survey of desertion, a summary of previous studies, a detailed analysis of the problem as it stands today, its extent and causes, its social significance, and methods both current and prospective, for its treatment. The materials are drawn from census reports and other printed records, but more largely from unpublished public reports, manuscript papers by social workers, personal letters from charity officials, and case records of disrupted families. The latter include 327 cases from the Chicago Court of Domestic Relations, and over 600 cases from the Stock Yards District of the Chicago United Charities. These primary sources and their analysis give the book its chief warrant and value.

Dr. Eubank's study leads him to six important conclusions. (1) Desertion is predominantly a city problem, because of the absence of primary group attachments, the anonymity, the break-down of the economic basis of the family, and the spirit of discontent which characterize modern city life. (2) Desertion is in the main a husband problem, because social conventions, maternity and economic dependence hold the wife to the home however much she may want to run away. (3) Desertion is not a racial or national phenomenon, for apparently American city life loosens the restraints of racial tradition. The author found 29 nationalities among the 8957 deserted families aided by the Cook County public poor relief agent from 1909 to 1915. The order in which the nationalities stood, judged by the number of deserters, was as follows: Jewish, Negro, Lithuanian, Danish, Canadian, Irish, American (white), French, Scotch, Hungarian, German, Russian, Slavonian, Polish, etc. (4) Desertion is not a phenomenon of religion or sect. "With respect to religious affiliation no sect or creed is exempt." Nor do mixed marriages apparently increase the danger. For out of the 327 Domestic Relations Court cases only 57 revealed differences of religious belief between husband and wife, while in 270 cases they were identical. It is perhaps true, as the author believes, that the proportion of Catholics is higher than it would be if their church permitted out-and-out divorce. His statistics might become more conclusive if they could be related to figures showing the distribution of religious affiliation in the general population of Chicago. The same remark would hold for the figures on nationality. (5) Desertion is, in many cases at least, "the poor man's

divorce," because it is easy, effective, cheap, without social stigma, and because it permits the patching up of family rents should the deserter ever care to return. (6) Desertion, however, is not due, primarily, to economic conditions. It often is, and this the author admits; but his chief argument is to the effect that poverty is not the main nor the necessary cause. His evidence is drawn largely from statistics showing a relatively smaller number of deserted families handled by charitable societies in times of industrial depression.

The extent of desertion is difficult to ascertain, for official governmental statistics are lacking, save where it ultimates in divorce. But the experience of relief societies in America and abroad shows that of all families under their care about 1 in 10 has dropped into dependence through desertion. The figures from American cities vary widely on this point (from 2.6% to 24.5%), but they are gathered from such widely separated dates that they are hardly comparable.

The classification of desertion types can hardly be other than pragmatic, based as it is in this and other studies upon the exigencies of relief methods. Dr. Eubank finds five types: the spurious deserter, the gradual deserter, the intermittent husband, the ill-advised marriage type, and the last-resort type. His principle of classification varies somewhat from that worked out by the Philadelphia Society for Organizing Charity which gave us these five classes: the chronic, the reclaimable, the spurious, the half-excusable, the un-get-at-able.

The main proposals in his constructive program of treatment include suggestions for a special schedule for use in charity offices with desertion cases; training of "desertion specialists," to handle this particular type of dependency; more rigorous attempts to separate spurious from genuine cases; emphasis upon efforts through kindly persuasion to reclaim the deserter and heal domestic differences; cutting down relief during the period where it is still possible that the husband may return (with the idea that his sense of magnanimity may be aroused by the knowledge that his family is really suffering by his absence); legal proceedings as a last resort, with the proviso that the wife should be required to testify in desertion cases, and that desertion should be made a misdemeanor rather than a felony. In this connection the author criticizes severely the hindrances to legal proceedings which make the way of the deserter altogether too easy. Philanthropic societies and wives hesitate about initiating prosecutions; courts refuse to issue warrants unless the deserter's probable address can be assured; police are dilatory in apprehending deserters; governors discourage extradition; local treasuries protest against the expense of bringing back deserters; and juries hesitate to indict or convict a deserter for felony.

As preventives the author suggests education, especially sex education, character building, inculcation of high ideals of home life, improvement of economic conditions to make a high plane of home life possible. This part of the book, it must be confessed, is the scantiest and least provocative.

Such a really valuable study merited a more becoming dress.

The typography is crabbed and unattractive, the statistical tables in some places almost drowned by the text. The proof reading was superficial, and many inexcusable errors in spelling cry out at the reader in consequence. Should a second edition be printed, the reviewer suggests that all French quotations be translated or rigorously corrected. (On p. 13, for example, six errors occur in a single paragraph, and some are to be found in all the other citations.) Also references to James Brice (pp. 10, 14), should correct the spelling of his name. A gross slip also mars a very important passage on p. 20: men are said to desert their wives very rarely "because of lack of unemployment," which is pure absurdity.

On the whole there is little to quarrel with in the materials themselves, although one may question the author's assumption that woman was the arch deserter among primitive peoples because she was denied divorce, and his flat generalization to the effect that "there is no doubt that the entrance of women into wage-earning occupations before marriage tends to make them unfit for married life." It is a subject for surprise also that no mention is made of the fact that in many cases of desertion there has never been a legal marriage. Moreover, an index is desirable even in a book of this size: let us not fall into the Continental habit of depending merely upon a table of contents.

These criticisms, however, must by no means be taken to becloud the real merits of Dr. Eubank's study. They merely suggest that so important a task was worthy of somewhat more finish and care for details.

University of Minnesota.

ARTHUR J. TODD.

SLAVERY OF PROSTITUTION—A PLEA FOR EMANCIPATION. By *Maude E. Miner*. The MacMillan Co., New York, 1916. Pp. 306.

"This book," says Miss Miner in her introduction, "is neither a 'vice report' nor a philosophical treatise, but an earnest study of what I consider without sensationalism or exaggeration to be the slavery of prostitution."

It is written from the point of view of an experienced probation officer who has dealt directly and personally with many hundred women of every degree of demoralization, as they passed through the Night Court of New York City. The pages are rich with illustrative instances, with observations of prostitutes themselves regarding their life histories and with a cross fire of comment by the author on the responsibility of the community for the unhappy fate of these women.

The book is a valuable contribution to the literature regarding prostitution, gathering quite completely in one volume a discussion of the complex and intricate causes of prostitution, an exposition of the operations of the exploiters of prostitutes, an analysis of the successes and failures of probation work, reformatories and protective societies, and a vigorous indictment of society for the sloth and blindness and selfishness which make this evil, not necessary but possible.

No one but a person who has known prostitutes at first hand, known of their hard childhood, their dejected life on the streets and in

brothels and of their severe struggle for rehabilitation could have written such a book. It may well be read not only by those who are actively interested in vice repression, and the reformation of delinquent and criminal women, but also by all who wish to secure in a single volume an exposition of what is no doubt society's most difficult problem, the cause and remedy of prostitution.

Chicago.

WALTER CLARKE.

PROCEEDINGS OF THE FORTY-THIRD ANNUAL MEETING OF THE NATIONAL CONFERENCE OF CHARITIES AND CORRECTIONS, INDIANAPOLIS, 1916. Pp. 702.

The published proceedings of the forty-third annual meeting of the National Conference of Charities and Corrections constitutes a valuable addition to the literature of social service. The preface states that "the Indianapolis transactions may be considered a leading incident in the history of organized social service and reform in the United States. Specifically, they represent a year's growth of a dignified and powerful association." The program dealt with concrete social problems, under certain large and general subjects. Numerous papers were presented upon the various aspects of each of these topics. Upon the whole, these papers are more exhaustive than usual, and indicate large familiarity with the subjects presented. The belief that the field of one's own work constitutes *the* social problem and that one's own remedy constitutes *the* social panacea, is noticeably absent from these papers.

The conference had, this year for the first time, a Committee on the Promotion of Social Programs, and the first division of the volume is given over to the report of this Committee presented by Graham R. Taylor and also discussed by others. This report emphasizes the necessity of building up social programs "through the participation and social thought of all elements in the community, rather than their formulation by a handful of people who call themselves experts." Mr. Lawson Purdy, President of the Department of Taxes and Assessments of New York City, urges the importance of proper taxing and assessing systems in order that there may be adequate sources of public support for social programs.

In view of the increasing strength of the anti-liquor movement, it is significant that alcoholism was singled out as one of the subjects of attack. In this division, Mr. Arthur Hunter of the New York Life Insurance Company, shows that the leading life insurance companies look with disfavor upon the applications of those who drink freely, and also of those who have taken alcoholic beverages to excess in the past. He affirms that statistics and experience indicate that total abstinence increases longevity. Dr. Alexander Fleischer, Supervisor of the Welfare Division of the National Life Insurance Company, points out that the attitude of large employers towards the use of alcohol by employees is becoming increasingly unfavorable. The relation between education and temperance is discussed by Elizabeth Tilton and Dr. Haven Emerson.

Unemployment was the topic for another group of papers. Gra-

ham Taylor emphasizes the fact that grappling with the unemployment problem must be a co-operative undertaking, to be participated in by government, business, and charity. Professor W. M. Leierson proposes a Federal Labor Reserve Board, as the administrative organization for putting unemployment remedies into practice. Mr. J. R. Shillady, Secretary of the Mayor's Committee on Unemployment in New York, proposes that the public expenditures for buildings, rivers and harbors, the reclamation service, good roads development and the like, should be planned to compensate for decreased private employment during business depression, instead of being made in years of greatest trade activity, as is so often the case.

The section on Feeble Mindedness and Insanity has largely to do with state policy in dealing with the insane and the feeble minded. The treatment of this subject is more thorough than that given to some of the other topics. Dr. Edward H. Ochsner describes the new Illinois law providing for the commitment of the feeble minded. There are valuable descriptions of the successful experiments in the new colony plan for the feeble minded, conducted at Templeton, Mass., Menantico and Burlington, N. J., and Rome N. Y. Additional papers follow upon the classification of the feeble minded, the modern treatment of insanity, and borderline cases.

The largest number of papers appears under the topic of Public and Private Charities, twenty-two papers upon this subject being presented. The regulation and standardization of charities was one of the important questions considered. Amy F. Acton of the Massachusetts State Board of Charities, describes the Massachusetts system of chartering and supervising all private charities. Her paper is an effective argument for some measure of public supervision, in recognition of the principle that private charity is a public trust. Eugene T. Lies, General Superintendent of the United Charities of Chicago, deplores the fact that political influences has too frequently predominated in the granting of public outdoor relief in Chicago, but he points to the fact that at present the most friendly relations obtain between the county and the private charities, a fact which augurs well for the improvement of the work. The social welfare boards of Kansas City and St. Joseph are described by other speakers.

A variety of subjects are discussed under the topic, The Family and the Community. The place given to the problems of the small community will prove welcome to many, as evidence of recognition of the social and civic problems which exist outside of the urban centers. Four papers are given to "Civic Effort in Small Communities."

Under Corrections, perhaps the most important paper is by Thomas Mott Osborne, upon "Prison Discipline and Character Building," in which the author gives expression to some of his well-known views upon this subject. The defective delinquent, the psychopathic delinquent, and the police-women movement also come in for consideration.

In the division given to Children, the problem presented is "Does Social Service Understand and Support the Public School?" Mrs

Florence Kelley opens the discussion with a brief but stimulating paper on "How Can Social Agencies Promote the Effectiveness of Public Schools?" The papers which follow all describe some form of actual or possible co-operation between the school and social agencies.

The concluding division is upon Health. Among the constructive proposals worthy of note, is the one of Dr. C. S. Woods of Indianapolis, that all venereal diseases should be promptly reported to the health authorities, and that every victim of such a disease should be hospitalized.

Many other able papers not here referred to are found in the proceedings. The variety of subjects treated is great, the different points of view represented are numerous. The information contained as to methods actually in use by various agencies is extremely valuable, and most of the proposals for new legislation and constructive work are worthy of consideration. The volume should prove a valuable handbook to social workers, sociologists, and all those interested in modern movements of amelioration and reform. All in all, it is a worthy companion to its predecessor.

Northwestern University.

RALPH E. HEILMAN.

MECHANISM OF CHARACTER FORMATION: INTRODUCTION TO PSYCHO-ANALYSIS. By *Dr. William A. White*. The Macmillan Company, New York. 1916. Pp. 342. \$1.75.

In this book, Dr. White has undertaken to show the contribution that the psycho-analytic method makes to the problems involved in the building of character. The book brings to the attention of the reader the genetic interpretation of character. The study and treatment of mental disorders by the method named has brought to light in many instances causative factors in unconscious complexes, the results of earlier experiences. The conception developed in this book is that of a vast rich unconscious life. It is only a small portion of mental life that lies in the foreground of consciousness. The steadying influences are in the unconscious. This is a valuable concept in that it leads on the one hand to an understanding of characteristics that form an aspect of personality and on the other hand it suggests a means for the alteration of characteristics already present. This means consists in the implanting of complexes in the unconscious such as may conflict with and thwart the expression of those the displacement of which is desired. This offers the one way of meeting failure and directing the individual toward adequate adjustment to his surroundings. The treatment of the subject matter of the book in hand tends to fill in the false gap between the physical and the psychological and to emphasize the hypothesis of psycho-physical monism.

Dr. White's work in this book is the most rational and the broadest statement of the Freudian doctrine that is known to the reviewer. Psychologists who are inclined to quarrel with the extreme Freudians will find little in this volume for adverse criticism. Educators who read it thoughtfully will be encouraged because of its emphasis upon

the development of dispositions. It occurs to the reviewer that many students of feeble-mindedness would find here reason for the query whether after all much that passes for natural feebleness of mind is not after all an expression of submerged acquired complexes.

Northwestern University.

ROBERT GAULT.

STUDIES IN FORENSIC PSYCHIATRY. By *Bernard Glueck*, M. D. Criminal Science Monograph No. 2. Boston: Little, Brown, and Company. 1916. Pp. 269.

Glueck's monograph is mainly a reproduction of various studies on forensic psychiatry and not a systematic treatise. The first paper, "Psychogenesis in the Psychoses of Prisoners" (pp. 1-65), gives a digest of chiefly the German studies on the effects of the prison on mental health, and on the degenerative psychoses, illustrated by cases of the author's own observation. The second chapter (Psychoses of Prisoners, pp. 66-131) covers similar ground from a somewhat different angle more apt to furnish a survey of the general topic. The last three chapters deal with special disorders: "The Forensic Phase of Litigious Paranoia" (pp. 132-155), "The Malingering: A Clinical Study" (pp. 156-238), and the "Analysis of a Case of Kleptomania" (pp. 239-266).

Looking over the ground covered, one cannot help feeling the tremendous departure from the medical-legal literature which consists mainly of the accounts of cases as they appear in the course of the traditional court procedure. In the first place, it is not a question of insanity or sanity that stands first, but a careful analysis of all the facts of the patient's stock and personal life as far as they can throw a light on the constitutional and incidentally also on the criminal tendency. In the second place, the whole analysis has the character of a biological reconstruction of the various facts with far more emphasis on the question of what there is to be done about the cases than on the question of responsibility or the question of guilty or not guilty put before a jury.

The book is written in a very readable style. While in some respects it follows rather closely German patterns, it follows in many ways the analytical psychodynamic interests more and more characteristic of American psychiatry. We may well look forward to interesting supplements from the unique field of Glueck's present work at Sing Sing, as supplementing this possibly somewhat one-sided material of observation at the Government Hospital for the Insane.

Johns Hopkins University.

ADOLF MEYER.

JUSTICE FOR THE POOR. By the *Committee on Criminal Courts of the Charity Organization Society of New York*. Published by the Committee, 1916. Pp. 25.

As a result of the work of the Page Commission in 1910 the inferior Criminal Courts of New York City were reorganized in such manner as greatly to increase the efficiency of the city magistrates'

court. Since 1910 there has been, under the auspices of the Charity Organization Society, a committee on criminal courts, whose special function has been to assist in the practical achievement of some of the reforms contemplated at the time of the reorganization of the courts.

This pamphlet, published by the committee on criminal courts, calls attention to certain evils which have resulted from the establishment in 1895 of a separate court of special sessions, and which though much more serious to defendants and prosecutors and the general public than commonly realized, are not necessary for the continuance and effectiveness of that court.

The special evils mentioned under the present operations of the magistrates' court and the court of special sessions are three: first, unnecessary punishment inflicted on poor men because of their poverty under misdemeanor charges, through being imprisoned, because of lack of bail, between the first hearing in the magistrates' court and the hearing in the court of special sessions; second, the red tape, delays, and inefficiency, and annoyance to officials and citizens under the present method of trying offenders for the violation of municipal ordinances, and regulations of the state and city departments; and, third, annoyance to witnesses and the obstruction of justice through delays which are not necessary.

The one important socially desirable good in the present system, which should be retained in any new proposal of change, is noted as being the right to demand a trial by more than one man in important and difficult cases, there being some cases which, both for fairness to the accused and to the prosecutor for the public, can better be heard before a court of special sessions with three judges than before a magistrates' court with only one judge.

The source of the evils which attend the present operation of the courts is said to be in the fact "that the legislature has attempted to define by a rigid and inapt classification those cases in which the trial should be delayed and formal." "Thus a mandatory stay in jail averaging about four and half days has been fastened upon prisoners held even for the most trifling offenses when both sides would be better served by an immediate disposition" before a magistrate: "and the trial court," the court of special session. "And its really important operations are retarded by a great mass of petty business which should and otherwise could be disposed of easily and promptly by the magistrate to the relief of all concerned."

The remedy for this situation is said to be as follows: First, to give the magistrate the power to dispose of the whole matter at once, at the first hearing, in all cases where the reason for formal trial does not exist; second, the creation of a special branch of the municipal court in which shall be heard all cases pertaining to violations of the sanitary code, labor law, and departmental regulations; and, third, the extending to justices of the magistrates' court of powers of the court of special sessions and vice versa so as to allow a shifting of justices from one court to the other to meet the current need, which plan

would also involve the placing of all clerks, officials, and records of both courts under one administrative system.

On answering certain criticisms of the plan the committee shows that such changes as these suggested would not give magistrates too much power; would not permit the "jockeying" of cases under friendly judges more than at present; would not lead to greater diversity in sentences than now; would not abolish the court of special sessions, rather retaining this with its good features; and would not infringe upon borough autonomy.

The pamphlet is well worth the careful attention of all students of social problems because of the thoroughness of the investigation of its authors, because of its fairness of approach, its clearness of statement, and its almost universal application. It marks a signal effort, on the part of trustworthy students, to make practical and more useful the criminal court machinery of a great city, which like most institutionalized machinery has been lagging behind the practical needs of the day. The work of this committee should stimulate interest in careful study of the social needs of criminal courts in other cities. The City of Chicago, for instance, is in need of just such a study at the present time. All of the evils found in the New York system are found in Chicago. There is gross outrage practiced in the handling of the poor man in the courts; there is red tape and needless delay in the handling of cases; and there is much annoyance, though not as much as formerly, owing to a change in the call system at the criminal court, to officers and witnesses and the obstruction of justice through delays; and there are duplicate hearings in the Municipal and Criminal Courts of cases over which the Municipal Court should have final jurisdiction at the time of the first hearing.

It is to be regretted that in some of our cities the methods of criminal procedure in the courts is so fundamentally bad that much more than a revision in some small details is needed before there can be any approach to a socially efficient court.

Colgate University.

ROY WILLIAM FOLEY.

Journal of the American Institute of Criminal Law and Criminology

Official Organ of the American Institute of Criminal Law and Criminology; of the American Prison Association; and of the American Society of Military Law.

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Managing Director, FREDERIC B. CROSSLEY,
Librarian of the Elbert H. Gary Collection of Criminal Law and Criminology, Northwestern University.

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CONTENTS

EDITORIALS:

- Program of the Ninth Annual Meeting of the American Institute of Criminal Law and Criminology—The New York Psychiatric Society Re Clinical Psychologists—Monograph No. 3—Prison Riot in Illinois—The Judge Baker Foundation162

CONTRIBUTED ARTICLES AND COMMITTEE REPORT:

1. The Need, the Property and Basis of Martial Law, with a Review of the Authorities.....*George S. Wallace* 167
2. Military Orders as a Defense in Civil Courts...*A. W. Brown* 190

CONTENTS—Continued

3. The Relation of Legislative Acts to the Problem of Drug Addiction	Alfred Gordon 211
4. On the Use Of the Term "Feeble-Minded"	E. A. Doll 216
5. A Study in the Psychology of Testimony	Charles Stillman Morgan 222
6. A Study of One Year's Parole Violators Returned to Auburn Prison	Frank L. Heacox 233
JUDICIAL DECISIONS	259
NOTES AND ABSTRACTS:	

The New York Psychiatrial Society Re Clinical Psychologists (266)—Logical Analysis of Subscribed Signatures (267)—Study of Delinquent Boys Released from Institutions (269)—A Study of the After-Career of 408 Delinquent Boys Who Were Committed from the King County (Washington) Juvenile Court to the Boys' Parental School and the State Training School During the Five-Year Period, 1911-1915 (270)—Developing Standards in the Work of Domestic Relations Courts (273)—The Need for a Public Defender (273)—To Establish a State Bureau of Indentification in California (275)—The Voluntary Defenders' Committee (278)—The Minnesota Legislature and Child Welfare (282)—Children in Industry and the Street Trades (283)—The War and Juvenile Delinquency (287)—The Fingerprint Method for the American Police Systems (288)—Report of Massachusetts Commission on Probation (290)—Meeting of the National Probation Association (291)—Supplementary Announcement of Courses in Criminology (292)—Sixth Annual Meeting of Illinois Branch of the Institute of Criminal Law and Criminology (299).

REVIEWS AND CRITICISMS:

The Intelligence of the Feeble-Minded, By *Alfred Binet* (304)—Study of Organ Inferiority and Its Psychical Compensation. A Contribution to Clinical Medicine, By *Alfred Adler*, (305)—Effects of Hookworm Disease on the Mental and Physical Development of Children, By *Edward K. Strong, Jr.*, (306)—The Binet Scale and the Diagnosis of Feeble-Mindedness, By *Lewis M. Terman* (307)—The Offender and His Relation to Law and Society, By *Burdette G. Lewis* (311)—The Man in Court, By *Frederick De Witt Wells* (312)—The Origin of Finger Printing, By *Sir William J. Herschell* (313)—Prison Reform, Compiled by *Corinne Bacon* (313)—Standardized Fields of Inquiry for Clinical Studies of Borderline Defectives, By *Walter E. Fernald* (313)—How May We Discover the Children Who Need Special Care? By *Robert M. Yerkes* (315)—The Public Defender; A Necessary Factor in the Administration of Justice, By *Mayer C. Goldman* (316)—Convict Labor for Road Work, By *J. E. Pennybacker* (316)—Publications Received (318).

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EDITORIALS

PROGRAM OF THE NINTH ANNUAL MEETING OF THE AMERICAN INSTITUTE OF CRIMINAL LAW AND CRIMINOLOGY

The ninth annual meeting of the American Institute of Criminal Law and Criminology will convene on Monday afternoon, September 3rd, 1917, at 2 o'clock, in the Court of Appeals Room, Saratoga Springs, New York.

The Secretary's office in the Grand Union Hotel, will be open for registration and reception of members during the entire sessions.

FIRST SESSION

Monday, September 3rd, 2 P. M., in Court of Appeals Room.
Annual Address of the President, John P. Briscoe, of Maryland.
Report of Secretary, Edwin M. Abbott, of Pennsylvania.
Report of Treasurer, Bronson Winthrop, of New York.
Report of Executive Board, John H. Wigmore, of Illinois, Chairman.
Report of Committee on "Insanity and Criminal Responsibility," Edwin R. Keedy, of Pennsylvania, Chairman. Discussion.
Report of Committee on "Probation and Suspended Sentence," Herbert C. Parsons, Massachusetts.
Report of Committee on "Public Defender," Harry E. Smoot, of Illinois, Chairman.
Report of Committee on "Drugs and Crime," Francis Fisher Kane, of Pennsylvania, Chairman.
Report of Committee on "Classification and Definition of Crime," Ernest Freund, of Illinois, Chairman.
Report of Committee on "Modernization of Criminal Procedure," Robert W. Millar, of Illinois, Chairman.
Report of Society of Military Law, Henry W. Ballantine, of Illinois, Secretary.
Appointment of Committee on Nominations. 6:30—Annual dinner.

SECOND SESSION

Monday, September 3rd, 8:30 P. M., in Town Hall.
Annual Address, Thomas Mott Osborne, of New York, "Common Sense in Prison Management."
Report of Committee on "Crime and Immigration," Miss Kate Claghorn, of New York, Chairman. Discussion.
Report of Committee on "Sterilization of Criminals," Dr. William A. White, of Washington, D. C., Chairman. Discussion.

Report of Committee on "Indeterminate Sentence, Release on Parole and Pardon," Edward Lindsey, of Pennsylvania, Chairman.

DISCUSSION

THIRD SESSION

Tuesday, September 4th, 2. P. M., in Town Hall.

Report of Committee on "Criminal Statistics," John Koren, of Massachusetts, Chairman.

Report of Committee on "Teaching of Criminalistics in Universities and Colleges," Robert H. Gault, of Illinois, Chairman.

Report of Committee on "State Societies and New Memberships," Harry V. Osborne, of New Jersey, Chairman.

Report of Committee on "Promotion of Institute Measures," Frederic B. Crossley, of Illinois, Chairman. Discussion.

Report of Committee on "Publications," Robert H. Gault, of Illinois, Chairman.

Report of Committee on "Nominations." Election of Officers. Unfinished Business. New Business.

THE NEW YORK PSYCHIATRICAL SOCIETY *RE* CLINICAL
PSYCHOLOGISTS

Resolutions adopted by the New York Psychiatric Society on December 6, 1916, are published at p. 266. All students of psychology unquestioningly agree that in making their diagnoses they are liable to error. In this respect they are in the same class with psychiatrists and specialists in nervous disease. All reputable students of psychology, furthermore, agree that before their diagnoses may be considered as final they must have taken account of "somatic retardation, physical anomalies, and neural defects or diseases." Such students need no warning on these points and none are so clearly aware as they themselves are of the shortcomings of "testers," or so-called "clinical psychologists" who have enjoyed six weeks of training.

In our observation psychologists without medical training who practice regularly or occasionally in the courts, prisons, or in the schools are eager to co-operate with the medical profession. But the pity of it is that in many instances the medical men who are available for assistance at critical junctures are grossly ignorant at the very points at which their knowledge should be most useful to the psychologist, namely, in regard to the normal functions and the diseases of the brain and the nervous system in general. Thus sin may be

imputed to the psychologist that does not belong to him alone.

The article by Mr. E. A. Doll in the present number is an excellent setting forth of the scientific aims and ideals of the "psychological profession."

ROBERT H. GAULT.

MONOGRAPH NO. 3

We are glad to announce that Criminal Science Monograph No. 3, supplement to this JOURNAL, will be ready from the press of Little Brown & Co. about the end of September. It will be a volume of upwards of 325 pages entitled, "The Unmarried Mother." The author is Percy G. Kammerer of Boston. There will be an introduction by Dr. William Healy, Director of the Judge Baker Foundation of Boston, formerly of Chicago. No book on this subject has been published in our country for twenty years. For this reason and because of its quality, Mr. Kammerer's book will find an eager reception.

ROBERT H. GAULT.

PRISON RIOT IN ILLINOIS

Within the week beginning on June 3 disgraceful riots occurred in the state prison at Joliet, Illinois. So formidable was the outbreak that a body of state militia encamped in the vicinity of the city had to be summoned to aid the prison authorities to restore order and to quench the fires that were soon raging in various quarters of the prison.

Certain Chicago papers attributed the disturbance to the "honor system" in particular and in general to "sentimentality" in the treatment of criminals. This "sentimentality" is alleged to have expressed itself with especial virulence in the form of letters addressed to the prisoners by a group of women who are members of a league that devotes itself in part to alleviating in this manner the tedium of the convict's life behind the walls. These letters had been allowed to pass freely to the prisoners, but now the prison authorities cut off the supply, and the riot followed apace.

In the first place it is footless to attribute this affair to the honor system for the obvious reason that there never has been such a system in vogue at Joliet in the sense in which the phrase "honor system" has gained currency in the course of the last few years. Of course, there were "trusties" within the walls—there have probably been

"trusties" in every prison since the year one in the history of penology. There were privileges also for the convicts; among others that of receiving letters some of which happened to be of the ultra sentimental sort such as the *Chicago Tribune* and other papers delighted to quote. The granting of no such privilege, however, is an essential of the honor system. The letters quoted are proof enough of the sentimental quality of some people, viz., the writers. They do not establish the sentimentality of all those who write and speak for progressive penology, and it is silly to cite such inane letters in support of the proposition that the sentimentality of the public is responsible for the Joliet riots. The public may be ever so "sentimental;" every citizen of the commonwealth may be employed in addressing mushy letters to the state's prisoners; but if the prison administration will *intelligently* discriminate between fit and unfit letters and hold up the unfit, it is difficult to understand how "sentimentalism" on the outside, expressed in such letters, can cause prison riots. Responsibility for such affairs rests upon prison authorities themselves and they cannot evade it, as the *Chicago Evening Post* has well said. They cannot defend themselves against a charge of incompetence by pointing at the public.

While we are thinking of a particular disturbance in a particular prison it may be worth while to say that we shall never have safe, sane, progressive prison administration without intelligent officials who are open-minded toward the results of scientific research in Criminology and willing to try a hand at administration in the light of the best available scientific knowledge in this field. This is a call to strong men. If we are to have weak or ignorant men or both weak and ignorant men in official positions in our penal systems it is better that they follow the easy road: stay in the ruts of custom.

ROBERT H. GAULT.

THE JUDGE BAKER FOUNDATION

The Judge Baker Foundation of Boston is related to the Juvenile Court of that city practically as the Juvenile Psychopathic Institute of Chicago, during the first five years of its history, beginning with 1909, was related to the corresponding court in Cook County, Illinois. It is a clinic, privately endowed, for the intensive study of baffling cases of children who fail to do satisfactorily under probationary treatment. In the language of the charter of the Foundation:

"The corporation is constituted for the purpose of promoting the better understanding of juvenile delinquents and the better ascer-

tainment of those elements and factors in juvenile delinquents which admit of desirable development and the ways and means by which to develop them; establishing and maintaining a clinic, medical, psychological, or other kind, which shall study, examine and make diagnoses, prognoses and reports on juvenile delinquents; conducting such activities as shall advance general and special knowledge of the causes of delinquency and of the care and treatment of delinquents; and generally carrying on civic and educational purposes and thereby establishing and maintaining a living memorial to Harvey Humphry Baker, first Justice of the Boston Juvenile Court."

Judge Baker in the course of his lifetime repeatedly expressed a desire to see the organization in Boston of such an institution as this. He very wisely proposed that the director in charge of work of this character should not be so burdened with cases as to prevent his giving all the time necessary for the most thorough-going scientific analysis of each case. It is understood that in the Foundation as now organized the experts in charge will have the opportunity for the deliberate, painstaking observation of the cases they take for examination, that Judge Baker craved for them.

The court and the people of Boston are especially fortunate in having secured the service of Dr. William Healy as Director of the Foundation. Since 1909 Dr. Healy has distinguished the Juvenile Psychopathic Institute of Chicago. He is especially well qualified for the work because of his great erudition in his specialty, and also because of his practical skill in gaining the confidence of children.

Dr. Healy is an Associate Editor of this JOURNAL and an author of international reputation. Among his best known publications are the following:

The Individual Delinquent, 1915.

Pathological Lying, Stealing and Accusation (Criminal Science Monograph No. 1; Supplement to this JOURNAL), 1915.

Mental Conflicts and Misconduct, 1917.

Epilepsy and Crime, *Illinois Medical Journal*, February, 1913.

Mental Defectives and the Courts, *Journal of Psycho-Aesthetics*, Vol. XV, Oct., 1910.

Chapter on Delinquency and Crime in Relation to Mental Defect or Disorder in Vol. I, of *Modern Treatment of Mental and Nervous Diseases*, edited by White and Jelliffe, 1913.

A Pictorial Completion Test, *The Psychological Review*, May, 1914.

Tests for Practical Mental Classification, *Psychological Review Monograph*, No. 54, March 1911. (In collaboration with Dr. Grace M. Fernald.)

ROBERT H. GAULT.

THE NEED, THE PROPRIETY AND BASIS OF MARTIAL LAW, WITH A REVIEW OF THE AUTHORITIES¹

GEORGE S. WALLACE²

THE NEED

The experience of individual man has been and will continue to be that occasions will arise in his life when a defense of his person and property by force is an absolute necessity. Communities of men have had, and will continue to have, the same experience. The ideal of government expressed by the great lawyer, David Dudley Field, is only an ideal, the attainment of which now seems farther off than ever before. It is as follows:

"A self-balanced and self-governed state, where every man stands erect in the fulness of his rights and the pride of his manhood, neither cringing nor overbearing, owing no allegiance but to duty, claiming none but from the heart, filling every service and exercising every right of the citizen; a government founded, not on the traditions of remote ages, not on usurpation, not on conquest, but on things firmer and older than all—the equality and brotherhood of man."

The men who framed and adopted our present constitution recognized that while it was essential that the war-making power should be in the general government, that the several states would from time to time face conditions that would make it absolutely necessary to defend themselves, and by a constitutional provision reserved to the several states the right of self-defense.³

The exercise of this right against organized rebellion, or a foreign state, is war. An incident to the exercise of this right by a state within its own territory in case of war or insurrection is the right to declare and apply martial law as a domestic fact.⁴

Martial law has been declared and exercised in six states in the past three years,⁵ and as a result there has been a great deal of discussion in the press about the extent to which it has been used. Some writers and public men have questioned the necessity of the measures used under it, and others have taken the broader ground that martial law as a domestic fact cannot exist in the United States,

¹Read before the American Society of Military Law, at its annual meeting in Chicago, September, 1916.

²Late Lieutenant-Colonel 2nd Infantry, W. Va. National Guard, and now Major J. A. G., O. R. C., U. S. Army. Member of W. Va. Bar, Huntington, W. Va.

³Art. 1, Sec. 10, Par. 3, U. S. Constitution.

⁴Hallecks International Law, Vol. 1, page 508.

⁵West Virginia, Colorado, Ohio, Montana, Galveston, Texas, and Atlanta, Georgia.

under the Constitution of the United States, or of any of the several states—contending that the military forces of either national or state government can only be used in the aid of and not independent of the civil authority, citing as authority for this position the case of *Elva v. Smith*, Mass. 5 Gray, and *Frank v. Smith*, Ky. 53 L. R. A., (N. S.) 1141.

The first case was one in which the military was called out for the express purpose of assisting the marshal, who was attempting to execute a process under the fugitive slave law, and the question of the right to declare or enforce martial law was not considered, and does not support this contention.

In *Frank v. Smith* (*supra*)^a disturbances brought about by persons banded together under the name of "Night Riders" were not suppressed by the local authorities, and the Governor ordered out the militia. There was no proclamation of martial law, or declaration of a state of war. The commander of the military forces directed that persons traveling through the country after night should be investigated, and if found suspicious to be arrested and held for the civil authorities. The plaintiff, traveling with a number of other persons along the road just about midnight, had a pistol in the buggy in which he was riding. He was arrested by the defendant under the belief that he was guilty of carrying concealed weapons, detained until the morning following, turned over to the civil authorities, and then released. He afterwards brought suit for damages, recovered a verdict before a jury, and the case went to the Supreme Court of Kentucky, who affirmed the judgment of the lower court.

The case turned upon the constitutional provision that the military shall at all times be in strict subordination to the civil power, and while it tends to sustain this theory, it must also be borne in mind that the court, in its opinion, stated:

"Of course we have not in mind a state of case in which actual war * * * exists, as it would be entirely beyond the scope of the questions we are considering to venture an opinion, much less lay down any rule of action for the government of military forces operating in the territory where a state of war actually prevailed."

This admission in the face of the constitutional provisions is an admission that conditions could exist that would make it necessary for the executive to exercise power in the discharge of his constitutional duties *greater than those permitted* by this decision. The de-

^aApproved and followed in *Fluke et al v. Canton-Adjutant Gen. Oak.*, 123 Pac. 1049. Contempt proceedings against Adjut. Gen. acting under Governor's orders in controversy over re-location of county seat.

cision, as a whole, is in conflict with the weight of authority, and will not bear analysis, the court holding that the constitution makes the Governor commander-in-chief of the militia, charges him with the duty of seeing that the laws are faithfully executed, and that this power cannot be controlled by the courts, as it is a power belonging to a co-ordinate branch of the government, and the constitution forbids one department to exercise any powers of either of the other; that the request of the civil authorities is not necessary to enable the Governor to call out the militia under a statute making it his duty to do so when he may deem it necessary for the safety of the commonwealth, or, in the case of invasion, insurrection, domestic violence, etc.; that the Governor, in the exercise of this constitutional and statutory power, acts as a civil and not as a military officer, and must direct its movements and operations in accordance with law, when the constitution provides that the military shall at all times be in strict subordination to the civil power—that a member of the militia thus called out is not justified in obeying the order of his superior officer to make an arrest that would be in excess of the powers which might be exercised by a peace officer of the state.

In effect, it holds that the Governor, as a co-ordinate branch of the government, is charged under the constitution with certain duties and invested with powers to perform those duties; yet, in the method of performance, the Court, and not the Governor, decides how these duties are to be performed. This is in conflict with the decided cases.⁷

In the course of its opinion the court stated:

"In ordering out and controlling the movements of the state militia the Governor is answerable only at the bar of public opinion, unless it be that abuses might warrant impeachment proceedings, it cannot for a moment be entertained that the governor must delay action until requested by the local authorities. This limitation upon his constitutional duty would, in many instances, deny him the right to take prompt and decisive action and suppress threatened or actual disorders or violence, and enforce obedience to the law. It would interfere with the express authority conferred upon him by the statute, and would in many instances and many places be disastrous to the peace and welfare of the state. Primarily the enforcement of the law is with the local civil authorities, but at times they are too weak to control the lawless element that exists in every society, and at other times they might be in sympathy with the forces who want to take the law into their own hands; but whatever the reason what may exist for the failure or inability of the local civil authorities to suppress violence and disorder, when it comes to pass that they cannot or will not do it, then it is not only the right, but the plain duty of the governor to act."

⁷*Martin v. Mott*, 12 Wheaton 19. Prize Cases, 2 Black, 636. *McCullough v. Moreland*, 4 Wheaton 314.

In the case at bar the civil authorities had not acted, and the Governor, acting under express power, was attempting to control a lawless element. His action in this connection was a political act, or the action of a co-ordinate branch of the government.

The court concludes:

"We have reached the conclusion that any military order, whether it be given by the governor of a state or the officer of the militia, or the civil officer of the city or county, that attempts to invest either officers or privates with authority in excess of that which may be exercised by a peace officer of the state, is unreasonable and unlawful."

Apply this doctrine to the action of the President in Colorado in issuing his proclamations of May 1st and May 6th, 1914, and under which proclamation officers and men of the United States army disarmed persons residing within the proclaimed districts. Every officer or soldier who disarmed such citizen, unless there was an express statute authorizing such action, was liable in an action of trespass to the person so injured. It is true that the court, in its opinion, leaves a loop-hole to meet such a situation: "of course, we have not in mind a state of case in which actual war exists." But would it hold that the civil disorder in Colorado was a state of war, and the actions under the proclamation authorized, or would it accept as final the declaration of the political departments of the government that a state of war existed? This, of course, is not a practical question so far as the Federal authorities were concerned, as doubtless the Federal courts would follow the doctrine laid down in the case of *Moyer v. Peabody*.

The court, in holding that the order was without lawful authority and did not protect a subordinate officer, is in conflict with a recognized rule that a subordinate is required to obey and is not excused in obeying an order from his superior, "unless the act was manifestly beyond the scope of his authority, or was such that a man of ordinary sense and understanding would know that it was illegal, that it would be a protection to him if he acted in good faith and without malice."⁸

These cases, therefore, will not sustain the contention that the military can only be used in aid of civil authority, and not independent thereof.

The contention that the military can only be used in aid of civil authority assumes that there is always a civil authority in the disturbed districts to be supported, and loses sight of a condition that

⁸*U. S. v. Clark*, 31 Fed. 711. *McCall v. McDowell*, Fed. Cases, 8673. *Riggs v. State* (Tenn.), 91 Am. Dec. 272. *State ex rel Wadsworth v. Shortall*, 206 Pa. 65 L. R. A. 193.

frequently exists, and which has to be dealt with, e. g.: In Idaho, after some six or seven years experience, seeing that the execution of the laws in Shoshone County, through the ordinary and established means and methods, was practically impossible, the Governor proclaimed martial law and with the aid of Federal troops restored order.

In Colorado, in 1913 and 1914, no attention was paid to the courts or the civil peace officers whatever, and there was a case of repression of the civil law.

Still another condition is frequent where the disorder is of such proportions that practically every man, woman and child is a partisan on one side or the other, with the remainder of the population afraid to take any stand for fear of personal violence from one of the other factions, the local magistrates and constables active partisans, and as was said by one magistrate in such a district, that he was at home and was within one hundred and fifty yards from the scene when a battle took place between contending factions, which lasted about thirty minutes, and in which battle perhaps one thousand shots were fired, "that he knew nothing about it, heard nothing about it, that he had lived at his present home twenty years, and had never seen a hostile blow struck."

With clashes between contending factions frequent and violent, lives being lost, persons assaulted, property destroyed, the county and local officers affording no protection to person or property, but declaring their inability to cope with the situation, and that they had and could get no evidence against the law-breaker, to ask if the state must depend upon or look alone to local authorities under these conditions, and has no power within itself to take hold of the situation and protect life and property, admits of but one answer.

To contend that the force used to restore order is only to be used in aid of an authority that has made no effort to maintain law and order, and in some cases is partisan enough not to want law and order, is to make an effort doomed in advance to failure, and, as was said by the United States Supreme Court:

"If the inhabitants of the state, or a great body of them, should combine to obstruct interstate commerce or the transportation of mails, prosecution for such offences had in such a community would be doomed in advance to failure, and if the certainty of such failure was known, and the national government had no other way to enforce freedom of interstate commerce and the transportation of mails than by the prosecution and punishment for interference

*Statement of operations of the court submitted by Gov. Ammons to M. D. Foster, Chairman of Mines and Mine Committee, Washington, D. C.

therewith, the whole interest of the nation, in this respect, would be at the mercy of a portion of the inhabitants of that single state."¹⁰

At the time of writing this article the Mexican situation is acute, and the newspapers are carrying reports of serious disturbances in certain border counties of Texas. The Secretary of State is quoted as saying that the internal disturbance in Texas is a problem for the state government.

Conceive of a county made up of partisans who are strong enough to dominate and do dominate the county officers and who would fail to enforce the law, would the State of Texas sit by and take no steps to suppress local disorders, other than to send into such county its military force and make arrests, and then turn the persons so arrested over to their friends to be promptly released to make further trouble?

When the Governor of Colorado called upon the President in 1914 for Federal troops to maintain law and order in his state, the President, in one of his communications to the Governor, expressed his surprise that "a state should surrender its sovereignty so willingly."

It is clear that a state needs this power, and Article 1, Section 10, Cl. 3, of the Constitution of the United States; viz:

"No state shall engage in war unless actually invaded, or in such imminent danger as will not admit of delay,"

does not take away from the state its war-making power, but, upon the contrary, recognizes that the states originally possessed it, and in adopting the Constitution did not surrender it entirely, but limited its use to actual necessity. This view was taken by the Supreme Court of the United States.¹¹

This need of the state is not new. It does not grow out of modern conditions, and it is believed that this power has not been taken away or limited by the Fourteenth Amendment.¹²

THE PROPRIETY

The need for martial law, whether it is founded on necessity, or is an incident of the war-making power inherent in a sovereign state, we believe must be conceded. Its propriety, meaning thereby its being put into effect, is a political question which must be decided by the proper department of the state or nation, usually the executive. The executive who makes this decision is in the same position as the man who is called upon to exercise his right of self-defense—who decides a question fraught with great moment to himself. The man

¹⁰In re Debs, 158 U. S. 534.

¹¹*Luther v. Borden*, 7 Howard 1.

¹²*Moyer v. Peabody*, 212 U. S. 79.

who strikes in self-defense answers before a jury, who judges his act from the circumstances as they appeared to him when he acted; the executive who declares martial law is liable to impeachment if he acts improperly,¹³ and, in all events, when quiet is restored, he is tried at the bar of public opinion. A large part of such opinion, for the time being, is based on reports that have no foundation in fact, and upon criticisms made by persons "who think in votes" and have not been careful to inform themselves as to all the facts. Disagreeable as this is, it serves a good purpose, as no executive will, except as a last resort, adopt martial law measures, for the obvious reason that, right or wrong, his action will subject him to much adverse criticism.

The propriety of martial law being a political question, the measures and steps to enforce it rest also with this branch of the government. Under our system of government, i. e., with the three co-ordinate branches, it seems anomalous to say that the executive department of a state government has the power of detention in time of insurrection or riot, and that the persons detained who petition the court for a release upon habeas corpus and are "remanded to the military authorities, have leave to repetition after thirty days, if at that time they have not been delivered to the civil authorities."¹⁴

This holding would seem to take from the executive the power to decide the necessity of detention, and at the end of thirty days, upon re-petition, put upon the executive the burden of showing to the court that the necessity continued to exist. Yet how would this proof be made, and would it admit of a traverse? If so, this does away with a co-ordinate branch of the government, and substitutes a judicial discretion in place of the executive discretion, and would seem to be in conflict with the decided cases.¹⁵

THE BASIS

Chief Justice Chase, in the *Milligan* case, 4 Wallace, page 142, in discussing military jurisdiction, held:

"That there are, under the Constitution, three kinds of military jurisdiction:

1. * * * *

2. * * * *

3. While the third may be denominated martial law proper, and is called into action by Congress, or temporarily when the action of Congress cannot be invited, and in the case of justifying or excusing peril by the President in time of insurrection or invasion, or of civil or foreign war, within districts or

¹³*Frank v. Smith*, 53 L. R. A., N. S. 1154.

¹⁴*Ex parte McDonald*, Montana 143, Pacific 947.

¹⁵*Martin v. Mott*, 12 Wheaton 19, 2 Black 636. *Ex parte Moore*, 64 N. C. 87. *In re Moyer*, 36 Col. 160. *In re Boyle*, 6 Idaho 609.

localities where ordinary law no longer adequately secures public safety and private rights."

This power has been designated as martial law at home, or as a domestic fact, and is the subject dealt with in this paper.

Chief Justice Chase finds the basis for the exercise of this power by the general government under the constitutional powers to raise and support armies and to declare war, and Mr. Justice Swain, who wrote the majority opinion, holds that the occasions when it can be properly applied are limited to actual necessity.

The adoption of the Constitution of 1787 by the several states created a government sovereign in its sphere, and while its powers were enumerated, it must of necessity have what it has since asserted; the inherent power in itself to preserve itself, and to carry out the powers granted. The states, in adopting the Constitution, did not divest themselves of their sovereignty, or limit their powers, except as expressly set out therein. It is true that the trend of things now is to look to an increase of the power of the national government, and to limit the powers of the state; but with this fact this article has nothing to do. We disagree with the theory that has been urged that the states, as such, have no power to declare martial law as a domestic fact, and believe the authorities show that it is as necessary for a state as for the United States, and the exercise of this power finds its justification, in both cases, in the same source.

Different writers, in discussing the *Luther v. Borden* case, have attempted to raise a doubt as to what the court meant when it held "that the right to declare and apply and exercise martial law is one of the rights of sovereignty;" that martial law is an indefinite term and that the Court probably did not mean what it held. Although there has been confusion in the use of this term by certain writers and in some instances by courts, for a great number of years prior to the decision in this case, the subject had received the attention of courts and text writers, and its definition fixed:

"Martial law is the law that depends upon the just and arbitrary power of the King or his lieutenant in time of war; for, in war, by reason of the great danger arising upon small occasions, he useth absolute power."¹⁶

"Martial law is an arbitrary law originated in emergencies, regulated by the expediency of the moment, and extending to all the inhabitants of a place or country."¹⁷

"Martial law is a temporary government controlled by military authority

¹⁶Quotation from Smith Rep. Aug. Lib. II, 03, cited in Blunt's Law Dictionary and Cowell Edition 1670.

¹⁷Dr. Wooster's Dictionary.

of territory in which, by reason of war or public disturbance, the civil government is inadequate to the preservation of order and enforcement of law."¹⁸

So it is safe to assume that the court, at the time of deciding the *Luther v. Borden* case, understood the term "martial law" in the same sense in which it is understood at this time.

The exercise of this power has been, and we venture to suggest will be, the basis of much contention between those entrusted with the power and responsibility of government in troublesome times, and publicists and text writers, with the result that it will continue to be used, from time to time, when the occasion arises, it matters not from what source it is derived or how it is justified.

English lawyers and publicists are divided upon the question of martial law as a domestic fact, one group insisting that martial law as a domestic fact has no place in England since the Petition of Rights, and urge in support of this theory that Lord Mansfield, in his speech in Parliament at the time of the Lord George Gordon riots stated that there was no martial law, but that the military was acting within its common law powers. This same line of reasoning is followed by Sir Frederick Pollock, who submits:

"So-called martial law as distinct from military law is an unlucky name for the justification by the common law of acts done by necessity for the defense of the commonwealth, when there is war within the realm. Such acts are not necessarily acts of personal force or restraint. They may be preventive as well as punitive."

And he concludes:

"First, that there may be purely a common law justification for acts being otherwise trespasses, done in time of war within the realm, on the ground of public defense.

Second, the person justifying such act must show that he acted in good faith.

Third, there must be a reasonable and probable cause, according to the apparent urgency.

The justification of any particular act done in a state of war is ultimately examinable in the ordinary court."¹⁹

This reasoning would seem to lead to the same result as martial law as a domestic fact, with the exception that the necessity for its exercise is ultimately a question for the courts, and not a political question.

The other school of lawyers and publicists contend that the Petition of Rights declared the exercise of martial law in time of peace unlawful; that when the courts are closed and the civil authorities

¹⁸40 Cyc. 787.

¹⁹XVIII Law Quarterly Review, 152.

are unable to maintain law and order, the Crown has the power to declare a state of war to exist. In support of this position the Wolf Tone case, relied upon by the first school of lawyers, is shown to be a case arising, not in time of war, but in a place remote from the scene of hostilities, and after the rebellion was over, and that the conviction, under either theory, was clearly illegal; that Governor Wall's case did not arise under a place or time of war, but under the statute relating to the discipline of the army, and he was convicted upon the issue whether he had acted in good faith under the belief of a mutiny or on mere pretext and malice; that the legality of martial law has been recognized by acts of Parliament in 1798; that at the time of the Lord George Gordon riots:

"The privy council was convened, at which not cabinet ministers alone, but all who had a seat, were desired to attend. The King himself was present. Irresolution still prevailed; nor was anything decisive or effectual suggested. The counsel had risen when the King anxiously demanded if no measures could be recommended. The Attorney General answered that he knew but of one—that of declaring the assembly rebellious, and authorizing the military to act when necessity required, although the magistrates should not attend. The King desired him to make up the order, which he did at the table on one knee, and a proclamation was drawn up, and orders from the Adjutant General's office issued accordingly."²⁰

The military, under this act or proclamation, commenced to put a stop to outrages, and in doing so killed something like four hundred people. The day following the House of Commons declined to proceed to business, under the notion that London was subjected to martial law.

During the present German-English war, under date of November 27, 1914, the following article appeared in the newspapers:

"London, Nov. 27.—Viscount Haldane, Lord Chancellor, gave assurance during the session that between now and the reassembling of Parliament, no British civilian tried by court martial would be deprived of life. The subject was raised by Earl Loreburn, who moved an amendment to the Defense of the Realm Bill, to provide that a British civilian, charged under the act, should have the right to demand trial by the ordinary civil court. Viscount Haldane pointed out that the amendment would kill the bill, and Earl Loreburn withdrew it upon the above assurance being given him."

From this action it would seem that the House of Lords does not regard martial law as a domestic fact as having been abolished in England, although its use has not been necessary for many years. Both schools of thought seem to be agreed upon one point: whether

²⁰Adolph's History of England, Vol. 3, pp. 246-54.

martial law exists as a domestic fact, or whether it is exercised under the common law right, the power finds its justification in necessity.

In the recent decision of the case *In re Marias*, decided in 1902, the Privy Council considered a case arising under martial law in South Africa, and adopted the views contended for by the minority opinion in the case *Ex Parte Milligan*, i. e.:

"That the area now affected by war, the area over which martial law is a necessity, and because of that necessity lawful or excusable, is much larger and much more extended than was the case prior to the increased facilities afforded for locomotion by railways and other improved modes of travel, and prior to the improved modes of transmitting information and orders by telegraph and light."

This case distinctly puts an end to the ancient rule that because for some purposes the courts are open at a place, that place must be held to be where peace exists, no matter what the actual facts may be.

THE UNITED STATES.

Martial law had been invoked in the Colonies prior to the Revolution. Sir Thomas Dale used it at Jamestown in the beginning of that colony; Sir William Berkeley after Bacon's Rebellion; General Gage declared martial law at Boston in 1775, and Lord Dunmore in Virginia at the same time;²¹ General Washington at Valley Forge in 1776; Lord Cornwallis in Georgia and the Carolinas in 1780. The State of Virginia, by an Act of the General Assembly passed May, 1780, declared that martial law should be in effect within ten miles from the lines of its armies, and provided for the trial of civilians, and also provided that in case of any insurrection within that commonwealth, or if the same should be invaded by the enemy, "that person or persons within the same, who act as guides, spies, or who shall furnish the enemy with provisions or necessaries," and certain other offenses, should be tried by court martial;²² and this in the face of the fact that it had a constitution that contained a guarantee of a jury trial by a jury from the vicinage. These acts were enforced in the State of Virginia in 1780 and 1781, as will appear from the trials of certain civilians by courts martial found in the manuscript of State Papers in the State Library at Richmond.

The Confederate States exercised and enforced martial law throughout the Confederacy, and particularly within the City of Richmond.²³

²¹10 Hen. Statutes at Large, pages 311, et seq.

²²Richardson's Documents and Papers of the Confederacy.

²³Burk's History of Virginia, 4th Volume.

It may be contended that these facts are not authority under our present constitution, and while that may be conceded, they certainly go to show that men who are acquainted with the English law and constitutions recognize that martial law was a part of the system to be appealed to when necessary. The Massachusetts Legislature declared martial law at the time of Shay's Rebellion. Its present constitution provides that martial law can only be declared by its Legislature.

Martial law was declared by General Jackson at New Orleans in 1815. This declaration was considered in the case of *Johnson v. Duncan*, 6 Am. Dec., 675, and 3 Martin. In this case a motion that the court might proceed with the hearing of the case at bar was resisted, and one of the grounds of such position was:

"That the City (New Orleans) and its environs were by general orders of the officer commanding the military district put on the 15th of December last under strict martial law."

The court held:

"The power of the President, under the Constitution, to call out the military forces of any part of the Union, in case of invasion, may be exercised by his delegate, as commanding officer, in a particular district, and all citizens subject to military rule at that time may be thereby placed under military law; but this is the extent of martial law, and all beyond it is usurpation."

In the course of its opinion the court stated:

"It is therefore our opinion that the authority of the courts of justice has not been suspended of right, by the proclamation of martial law, nor by the declaration of the General of the Seventh Military District that the City of New Orleans was a camp, and we now repeat what we declared when the subject was discussed, 'that the powers vested in us by law can be suspended by none but legislative authority.'"

Compare the views therein expressed with the letter from Chief Justice Chase, of the Supreme Court of the United States, addressed to the President of the United States, under date of Washington, October 12, 1865:

"I so much doubt the propriety of holding Circuit Courts of the United States in states which have been declared by the executive and legislative department of the national government to be in rebellion, and therefore subjected to martial law—before the complete restoration of their broken relations with the nation and the supercedure of military by civil administration—that I am unwilling to hold such courts in such states within my circuit, which includes Virginia, until Congress shall have had an opportunity to consider and act on the whole subject. A civil court in a district under martial law can only act by the sanction and under the suspension of the military power, but I cannot think it becomes Justices of the Supreme Court to exercise jurisdiction under such condition. In this view, it is proper to say that Mr. Justice

Wayne, whose whole circuit is in the rebel states, concurs with me. I have had no opportunity to confer with other justices."²⁴

The Rhode Island Legislature declared martial law at the time of Dorr's Rebellion, and as the result of it the case of *Luther v. Borden*, 7 Howard, was decided by the Supreme Court with a dissenting opinion by Judge Woodbury. The majority opinion held:

"The right to declare and apply and exercise martial law is one of the rights of sovereignty, and is as essential to the existence of the state as the right to declare or carry on war. * * * The power is essential to the existence of every government, essential to the preservation of order and every institution, and is as necessary to the states of this Union as to any other government. The state itself 'must determine what degree of force the crisis demands.'"

Justice Woodbury dissented, and discussed at great length the constitutional guaranties and rights of the individual, but at page 83 of his opinion admits the right to declare martial law in the theatre of actual war, or of civil disorder, holding:

"But in civil strife they are not to extend beyond the place where insurrection exists, nor to the portion of the state remote from the scene of military operations."

In 1856 the Territorial Governor of Washington Territory declared martial law, and the question of his authority to do so was submitted to Mr. Cushing, then the Attorney General of the United States, who arrived at the conclusion that the Territorial Governor did not have this power. In 1885 and 1886, in the same territory, in an illegal uprising against the Chinese, which resulted in riot and disorder, the then Territorial Governor declared an insurrection to exist, and placed the territory under martial law. The President of the United States approved the Governor's action, and issued a proclamation stating that the case which has arisen justified, and required under the Constitution of the laws of the United States, the employment of military force to suppress violence and enforce the faithful execution of the laws, and sent Federal troops into the territory for this purpose.

When the Civil War was commenced in 1861, the real test of the stability of this government came. Could the government sustain itself, and did it have, under the Constitution, the power to exercise belligerent rights against those who were in truth and fact citizens of the United States? In the Prize Cases, 2 Black, the right of the government to blockade the Confederate states was challenged, and

²⁴See *In re Marias*. Cases 3621-a, Federal Cases—*In re Davis*.

the rights to seize and capture as prizes of war goods belonging to persons within the limits of the Confederate states were denied by four judges. The majority held that war actually existed and the sovereign may exercise both belligerent and sovereign rights.

It must be borne in mind that in times like those judges were human, and in many instances saw the cases from the standpoint of party politics, and that while many of the acts of the officers of the general government in the conflict of the war, when brought before the court, were not sustained, it will be shown that in every case in every court the right to declare and enforce martial law, under some circumstances, was recognized. The cases follow:

In re Kemp, 16 Wisconsin, 383, held:

"The power suspending the writ of habeas corpus under the first section of Article 9 of the Constitution, is a legislative power; and is vested in Congress, and the President had no power to suspend the writ,"

but held:

"Martial law is restricted to and can only exist in those places which are the actual theatre of war and their immediate vicinity and it cannot be extended to remote districts. * * * But if, owing to the disloyalty of the magistrates, or the insurrectional spirit of the people the laws cannot be enforced or maintained, then martial law takes the place of civil law in such district whenever there is sufficient military force to execute it."

Jones v. Seward, 40 Barber, N. Y., 63, a case arising out of the arrest and imprisonment of the plaintiff by order of Mr. Seward. It is a terrific arraignment of the exercise of arbitrary power, but admits that the Commander-in-Chief may exercise the right of martial law within the theatre of military operations.

Johnson v. Jones, 44 Ill. An action of trespass brought by Johnson and others against Jones for an arrest made of the plaintiff by the defendant in the State of Illinois, and the plaintiff was taken by force to New York and there imprisoned for a time and afterwards taken to the State of Delaware and there imprisoned at Fort Delaware.

The defendants justified their action under a plea that they were United States Marshals and that the plaintiff was engaged in aiding a society in treasonable purposes. The court held:

"The President had no rightful power, in the time of peace, to cause an arrest of a citizen of one state, without process and convey him to another state and there imprison him without judicial writ or warrant in a military fortress."

"Martial law is not law, in any proper sense, but merely the will of the military commander, to be exercised by him only on his responsibility to his

government or superior officer, and when once established it applies alike to citizen and soldier."

"Martial law must be permitted to prevail on the actual theatre of military operations in time of war, is an unavoidable necessity resulting from the very nature of war."

"The commanding officer may arrest persons, whether citizen or alien, under authority of martial law, whom he finds within his lines giving aid or information to the enemy, and detain him so long as may be necessary for the security or success of his army."

"The government may be justified in treating a district as virtually attached to the theatre of military operations, and in enforcing martial law therein so far as may be necessary to the public safety, if in a district remote from the theatre of military operations the popular sentiment is so disloyal to the government that one who aids and abets the public enemy cannot be rendered powerless, and brought to justice by the arm of the civil law. Exercise of martial law can be defended upon no ground beyond its enforcement on the actual field of military operations, which is the result of an overmastering necessity, and its establishment in districts which, though removed from the seat of war, are yet so far in sympathy with the public enemy as to obstruct the administration of laws through the civil tribunals, and rendering a resort to military power a necessity, as the only means of restraining disloyalty from overt acts and preserving the authority of the government. War does not, of itself, suspend at once and everywhere, the constitutional guaranties of liberty and property. Martial law cannot be resorted to in that part of the country where the civil courts, in the midst of loyal communities, are exercising their ordinary jurisdiction, although the government may be prosecuting a war for the suppression of rebellion in other parts of the country. Persons arrested in such loyal community and deprived of his liberty by order of the President * * * without legal process, for alleged disloyal practices therein, such arrest will be unlawful."

Griffin v. Wilcox, 21 Indiana, 1863, a case in which a provost marshal arrested a man not in any way connected with the army, for retailing liquor in his usual place of business to soldiers. The court held the defendant liable to the arrested party for damages, but held:

"The President had a right to govern through his military officers by martial law, when and where the civil power is suspended, by force. In all other times and places the civil excludes the martial law, and that it is a right exercised precisely upon the point on which self-defense justified the use of force by individuals."

In the matter of *Martin*, 45 Barber, 143, Supreme Court of New York, Leonard, Judge, held:

"When necessity arises, the military power is paramount, and the laws are silent."

McLaughlin v. Graham, 50 Miss., decided in 1874, held the com-

manding officer liable for the destruction of certain liquors, and held, in finding that martial law may rightfully obtain:

"It is limited to the theatre of actual military operations, when no civil authority remains and there is a necessity to furnish a substitute to preserve the safety of the army and society, and martial rule shall only prevail until the laws can have their free course."

In re Vallandigham, Circuit Court of the United States, Southern District of Ohio.

In 1863, Mr. Vallandigham, a resident of the State of Ohio and a citizen of the United States, was arrested in that state under the order of the military commander thereof, taken to Cincinnati and arraigned before a military commission on a charge of having expressed sympathies for those in arms against the government of the United States, and for having uttered in a speech in a public meeting disloyal sentiments, opinion, etc., with the object and purpose of weakening the powers of the government in its efforts for the suppression of an unlawful rebellion. The President, in commutation of the sentence, directed the commander to send the prisoner, without delay, to the headquarters of General Rosecrans, to be by him put beyond the military lines, which order was executed.

The Court held:

"The commander of a military department, as the agent and representative of the President, in time of civil war, has authority, under the Constitutional provisions making the President the commander-in-chief, even in a locality where martial law is not in force, to arrest citizens not in the military or naval service, for mischievous acts of disloyalty which impede or endanger the military operations of the government. Such arrests are justifiable on the ground of military necessity, and of the existence of that necessity the commanding general is the exclusive judge, and the courts have no authority, by writ of habeas corpus, to inquire into it."

Vallandigham petitioned the Supreme Court of the United States for a writ of certiorari, to the Judge Advocate General of the United States. The court declined the writ on the ground that a military commission is not a court within the meaning of the Judiciary Act, and that there was no jurisdiction in the Supreme Court to issue a writ of habeas corpus ad subjiciendum to review or reverse, or the writ of certiorari to revise the proceedings of a military commission.²⁵

The Court, in the course of its decision, used the following language:

"As to the President's actions in such matter, and those acting in them

²⁵1 Wallace 243.

under his authority, we refer to the opinions expressed by this court in the case of *Martin v. Mott*, 12 Wheat., 29, and *Dynes v. Hoover*, 20 Howard, 65."

The last point in the syllabus of the latter case:

"If a court martial has no jurisdiction over the subject matter of the charge it has been convened to try, or shall inflict punishment forbidden by the law, though its sentence be approved by the officers having revisory power over it, civil courts may, in an action by a party aggrieved by it, inquire into the want of the court's jurisdiction, and give redress."

Did the court mean to intimate that it disagreed with the holding of the Circuit Court, and that Vallandigham would have been entitled to recover from the defendants in an action of trespass for false imprisonment?

In re Eagan, Federal case 44303, a man tried by a military commission in the State of South Carolina, petitioner was discharged upon a habeas corpus, upon the ground that the commission was without jurisdiction, on account of the re-establishment of the civil courts before the commission of the offense and the trial. The court held:

"Martial law is the will of the general who commands the army. It can be indulged in only in cases of necessity, and ceases when necessity ends."

Ex parte Milligan, decided in 1866, involved the trial and conviction by a military commission of Milligan, who was arrested in the State of Indiana, in which there was no war and had not been, and in which the courts were not only sitting, but absolutely unobstructed in the exercise of their powers. The majority held:

"It will be borne in mind that this is not a question of the power to proclaim martial law when war exists in a community and the courts and civil authorities are overthrown. * * * Martial law cannot arise from a threatened invasion. The necessity must be actual and present, the invasion real, such as will effectually close the courts and dispose of civil administration. * * * It follows from what has been said on this subject that there are occasions when martial rule can be properly applied. If in foreign invasions or civil war the courts are actually closed, and it is impossible to administer criminal justice according to law, then in the theatre of actual military operations where war really prevails there is a necessity for substitute for civil authority thus overthrown."

The minority held:

"Where peace exists the laws of peace must prevail. What we do maintain is, that when the nation is involved in war, and some portions of the country are invaded, and all are exposed to invasion, it is within the power of Congress to determine to what State or districts such great and imminent public danger exists as justifies the authorization of military tribunals for the trial of crimes and offenses against the discipline or security of the army or against the public safety."

It will be seen that this case does not decide that martial law

as a domestic fact cannot exist in the United States, but clearly recognizes the right of martial law under the conditions set forth in the opinion. James A. Garfield, of counsel for the petitioner, made the same distinction.

In North Carolina, by reason of certain disorders brought about by the activities of persons known as the Ku Klux Klan, the Governor of North Carolina declared the counties of Alamance and Caswell to be in a state of insurrection. His action came before the Supreme Court of North Carolina in application for a habeas corpus in the cases of *Ex parte Moore* and *Ex parte Kerr*, found in 64 N. C. 807-816. The Court held:

"The constitution and statutes empowered the Governor to declare a county in a state of insurrection whenever in his judgment the civil authorities are unable to protect its citizens in the enjoyment of life and property. The Governor, as was declared in regard to the County Alamance, and the judiciary, cannot recall his actions in question or review them, as the matter is confided solely to the judgment of the Governor but the writ of habeas corpus has not been suspended by the Governor, and ought not to be."

The Court then admitted its inability to enforce the writ.

It is submitted that the holding of this case would have harmonized with the decision of the Supreme Court of the United States in the *Moyer v. Peabody* case, and with the weight of authority, if it had held that the return of the Governor to the writ was sufficient, and that the detention, under the conditions shown to exist was legal. If the first part of its holding is not sound, it seems that this conclusion would necessarily follow.

In re Commonwealth ex rel Wadsworth v. Shortall, 206 Pa., 65 L. R. A., 193.

In this case the court held that a condition of qualified martial law exists where the Governor called out the militia and directed it to restore order, when rioting and disorder existed by reason of a strike, and that on such occasions the authority of the civil officers of the government is subordinate to that of the military, and the military, while on such duty, are in active service for the suppression of disorder and violence, and their rights and obligations must be judged by the standard of actual war, although their acts are subject to the review of civil authorities, which is not the case where actual war exists, and a military officer charged with the duty of suppressing a riot cannot be punished by the civil authorities for acts which at the time seem necessary for the accomplishment of his mission.

The court, in reaching this conclusion, adopted the view held by

Lord Mansfield and Sir Frederick Pollock, i. e., the justification by the common law of acts done by necessity for the defense of the commonwealth; and the court, in the course of its opinion, recognized the condition as it actually existed, and defined what it means by a qualified martial law :

"Qualified in that it was to be in force only as to the preservation of public peace and order, not for the ascertainment or vindication of private rights, or the other ordinary functions of government. For these the courts and other agencies of the law are still open, and no exigency required interference with their functions. But within its necessary field, and for the accomplishment of its intended purpose, it was martial law, with all its powers. The government has and must have this power or perish. And it must be real power, sufficient and effective for its ends, the enforcement of law, the peace and security of the community as to life and property.

It is not unfrequently said that the community must be either in a state of peace or of war, as there is no intermediate state. But from the point of view now under consideration, this is an error. There may be peace for all the ordinary purposes of life, and yet a state of disorder, violence, and danger in special directions, which, though not technically war, has in its limited field the same effect, and, if important enough to call for martial law for suppression, is not distinguishable, so far as the powers of the commanding officer are concerned, from actual war. The condition in fact exists, and the law must recognize it, no matter how opinions may differ as to what it should be most correctly called. When the civil authority, though in existence and operation for some purposes, is yet unable to preserve the public order and resorts to military aid, this necessarily means the supremacy of actual force. * * * * But if the situation goes beyond county control, and requires the full power of the state, the Governor intervenes as the supreme executive, and he or his military representative becomes the superior and commanding officer. * * * * The resort to the military arm of the government, therefore, means that the ordinary civil officers to preserve order are subordinated, and the rule of force under military methods is substituted to whatever extent may be necessary in the discretion of the military commander. To call out the military, and then have them stand quiet and helpless, while mob law overrides the civil authorities, would be to make the government contemptible, and destroy the purpose of its existence.

The effect of martial law, therefore, is to put into operation the powers and methods vested in the commanding officer by military law. So far as his powers for the preservation of order and security of life and property are concerned, there is no limit but the necessities and exigency of the situation. And in this respect there is no difference between a public war and domestic insurrection. What has been called the paramount law of self-defense, common to all countries, has established the rule that whatever force is necessary is also lawful. * * * * There is no real difference in the commander's powers in a public war and in domestic insurrection. In both he has whatever powers may be needed for the accomplishment of the end, but his use of them is followed by different consequences. In war he is answerable only to his

military superiors, but for acts done in domestic territory, even in the suppression of public disorder, he is accountable, after the exigency has passed, to the laws of the land, both by prosecution in the criminal courts, and by civil action at the instance of parties aggrieved."

The court then proceeds to discuss the standards by which the rights and obligations must be judged, holding:

"While the military are in active service for the suppression of disorder and violence, their rights and obligations as soldiers must be judged by the standard of actual war. No other standard is possible,"

that the subordinate officer, acting in obedience to the orders of his commander, is excused unless the act were manifestly beyond the scope of his authority, or were such that a man of ordinary sense and understanding would know that it was illegal, provided he acted in good faith and without malice. Applying this doctrine to the case at bar, the prisoner was discharged.

It is submitted that the reasoning of this case squares with the doctrine of justification under the common law; i. e., the facts being established, the court found, as a matter of law, that they were justified on the ground of necessity. A note to this case found in 65 L. R. A., indicated that this decision is not in harmony with the *Ela v. Smith*, *supra*, and the Coit case in Ohio, and states that when local authorities refrain from doing their duty, it has necessitated a change in the strict rule of the last mentioned cases, "and compelled the courts to enlarge the powers of the head of the military when called out by the civil executive to suppress such rebellion or insurrection." It might be asked from what source the court gets the authority to enlarge the powers of the military.

In re Boyle, Idaho, 45 L. R. A., 833.

The Governor by proclamation set out at length the conditions that existed in Shoshone County, and had existed for six years past; that the civil authorities did not appear to be able to control the situation, and declared the County of Shoshone in the State of Idaho to be in a state of insurrection and rebellion. Afterwards, upon the call of the Governor, a military force was sent into Shoshone County by the President of the United States, which proceeded to arrest the persons believed to have been engaged in the disorders. Among the persons arrested was the petitioner. The petitioner, in his petition, based his claim to be discharged from arrest upon the ground that no insurrection

"That no insurrection now exists in Shoshone County; that the Governor had no authority to proclaim martial law or suspend the writ of habeas corpus;

that martial law does not exist in Shoshone County and has not been proclaimed by anyone having authority to make such proclamation; that the little disturbances of April 29th were over; that the parties implicated in it, after having destroyed about a quarter million dollars of property and committed several murders, had retired to their homes, and that, in recognition of the inalienable rights of the citizens they ought not to be disturbed; that the Governor had no right or authority to send an agent or representative to Shoshone County to consult and advise with the military forces sent there by the Federal Government to assist in putting down the insurrection."

The court held that the truth of recitals of alleged facts in the proclamation issued by the Governor, proclaiming a certain county in the state to be in a state of rebellion and insurrection, will not be inquired into or reviewed on application for writ of habeas corpus; that the said proclamation of the Governor and his action in calling to his aid the military forces of the United States for the purposes of restoring good order, and the supremacy of the law, had the effect to put into force, to a limited extent, martial law in said county, and such action is not in violation of the constitution, but in harmony with it, being necessary for the preservation of the government, and in its necessary self-defense, and that in case of insurrection or rebellion the Governor, or the military officer in command, for the purpose of suppressing the same, may suspend the writ of habeas corpus, or disregard the writ, if issued.

The court, in the course of its opinion, said:

"In such case the government may, like an individual, acting in self-defense, take those steps necessary to preserve its existence. If hundreds of men can arm themselves and destroy vast properties, and kill and injure citizens, thus defeating the ends of government, and the government be unable to take all needful and necessary steps to restore and maintain order, the state will then be impotent, if not entirely destroyed, and anarchy placed in its stead. It is not argument to say that the executive was not applied to by any county officer of Shoshone County to proclaim said county to be in a state of insurrection, and for those reasons the proclamation was without authority. The recital in the proclamation shows the existence of one of two conditions, namely, that the county officers in said county, whose duty it was to make said application, were either in league with the insurrectionists, or else in fear of the latter said officers refrained from doing their duty. * * * It having been demonstrated to the satisfaction of the Governor, after some six or seven years experience, that the execution of the laws in Shoshone County through the ordinary and established means and methods, was rendered practically impossible, it became his duty to adopt the means prescribed by the said statute for establishing in said county the supremacy of the law, * * * and it is not the province of the court to hinder, delay or place obstructions in the path of duty prescribed by law for the executive, but rather to render him all the aid and assistance in their power to bring about the consummation most devoutly prayed for."

In re Moyer, 35 Col. 159; 85 Pacific, 190.

Prior to the arrest of the petitioner there had been industrial disturbance in San Miguel County, which has assumed such proportions that the Governor, by proclamation, determined and declared the county to be in a state of insurrection, and the military officers of the State of Colorado sent into the county for the purpose of restoring order, arrested the petitioner, and were detaining him upon the ground that he was aiding and abetting in insurrection. Upon petition for a writ of habeas corpus to the Supreme Court of Colorado, the writ was issued and the return made thereto, and the Court, denying the writ, held:

"That the recitals in the Governor's proclamation establishing martial law in a county in the state, that a state of insurrection existed there, cannot be controverted in a habeas corpus proceeding to secure the release of one arrested by the military authorities; that the acts of the Governor in exercising his constitutional power to suppress insurrection, cannot be interfered with by the court so long as he does not exceed the power conferred upon him, and that the military, in suppressing an insurrection under the Governor's orders, may, without turning them over to the civil authorities, seize and detain insurrectionists and those aiding and abetting them until the insurrection is suppressed, and that such seizure and detention of insurrectionists by the militia, when acting under the orders of the Governor to suppress insurrection, does not violate the constitutional provision that the military shall always be in strict subordination to the civil authority, since the act of the Governor is in his civil capacity.

The crucial question, then, is simply this: Are the arrests and detention of petitioners narrated illegal? When an express power is conferred, the necessary means may be implied to exercise it which are not expressly implied or prohibited. Laws must be given a reasonable construction, which, so long as possible, will enable the end thereby sought to be obtained. So with the constitution. It must be given that construction of which it is susceptible, which will tend to maintain and preserve the government of which it is a foundation, and protect the citizens of a state in the enjoyment of their inalienable rights. * * * * If, as contended by counsel for petitioner, the military, as soon as the rioter or insurrectionist is arrested, must turn him over to the civil authorities of the county, the arrest might, and in many instances would, amount to a mere farce. He would be released on bail and left free to again join the rioters or engage in aiding and abetting their action, and if again arrested the same process would have to be repeated, and thus the action of the military would be rendered a nullity. * * * To deny the right of the military to detain them when arrested, while engaged in suppressing acts of violence, and until order is restored, would lead to the most absurd results."

The dissenting opinion of Mr. Justice Steele deals with the right to suspend the writ of habeas corpus, and is rich in excerpts from speeches delivered in Congress upon the propriety of the suspension

of the writ of habeas corpus during President Madison's administration. This case did not suspend the writ of habeas corpus; but, upon the contrary, the writ was issued and return made thereto, and the petitioner remanded, the court holding that his detention was legal.

After his release Moyer brought suit in the Federal Court of Colorado against Governor Peabody, for damages. A demurrer was interposed to his declaration, and sustained, and the case certified to the Supreme Court of the United States, who held that the imprisonment of two and a half months under the order of the Governor of the State, without sufficient reason, but in good faith in the exercise of the power under the State constitution and laws to call upon the military arm of the State to suppress insurrection, does not deprive the person imprisoned of his liberty without due process of law, and in the course of its opinion said:

"It is admitted, as it must be, that the Governor's declaration that a state of insurrection existed, is conclusive of that fact. It seems to be admitted also that the arrest alone would not necessarily have given a right to bring this suit. But it is said that a detention for so many days, alleged to be without probable cause, at a time when the courts were open, without an attempt to bring the plaintiff before them, makes a case on which he has a right to have a jury pass. * * * * Of course, the plaintiff's position is that he has been deprived of his liberty without due process of law. But it is familiar that what is due process of law depends on circumstances. It varies with the subject matter and the necessities of the situation. * * * * In such a situation we must assume that he had a right, under the state Constitution and laws, to call out troops, as was upheld by the Supreme Court of the State. * * * * That means that he shall make the ordinary use of the soldiers to that end; that he may kill persons who resist, and, of course, that he may use the milder measure of seizing the bodies of those whom he considers to stand in the way of restoring peace. * * * When it comes to a decision by the head of the state upon a matter involving its life, the ordinary rights of individuals must yield to what he deems the necessities of the moment. Public danger warrants the substitution of executive process for judicial process. * * * * This was admitted with regard to killing men in the actual clash of arms; and we think it obvious, although it was disputed, that the same is true of temporary detention to prevent apprehended harm. As no one would deny that there was immunity for ordering a company to fire upon a mob in insurrection, and that a state law authorizing the Governor to deprive citizens of life, under such circumstances, was consistent with the Fourteenth Amendment, we are of the opinion that the same is true of a law authorizing by implication what was done in this case. It is unnecessary to consider whether there are other reasons why the circuit court was right in its conclusion."²⁶

(To be concluded in the next number.)

²⁶*Moyer v. Peabody*, U. S.

MILITARY ORDERS AS A DEFENSE IN CIVIL COURTS¹

A. W. BROWN²

1. The purpose of this paper is to present a review of the decisions of courts and the views of certain text writers, which relate to the general subject of military orders as a defense in civil courts, to summarize them, and to venture roughly to indicate the *ratio decidendi* that will probably be developed by the tribunals in their determination of certain cases that await an authoritative and final decision.

2. The subject for discussion was presented in the following form:

"The extent to which obedience to military orders would justify the commission of acts which would otherwise be punishable in a civil court."

3. The rule in tort actions seems to have been finally and fairly definitely established by a long line of decisions from that in the case of Captain Gambier of the British navy, which is referred to by Lord Mansfield in *Mostyn v. Fabrigas*, 1 Cowper 180, to that in *Franks v. Smith*, decided in 1911 and reported in 142 Kentucky, 232. Some of the more important cases are cited in the notes.³

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²Captain, Acting Judge Advocate, U. S. A.

³*Mostyn v. Fabrigas*, 1 Cowp. 180 (1774);
Little v. Barreme, 2 Cranch 176 (1804);
Ruan v. Perry, 3 Cains 120 (1805);
Wise v. Withers, 3 Cranch 331 (1806);
Brown v. Howard, 14 Johns 118 (1817);
Bell v. Tooley, 11 Ire. 605 (1850);
Mitchell v. Harmony, 13 Howard 115 (1851);
Despan v. Olney, 1 Curtis 306 (1852);
Fisher v. McGirr, 1 Gray 45 (1854);
Clay v. U. S., Devereux 25 (1855);
Skeen v. Monkheimer, 21 Ind. 4 (1863);
Barrow v. Page, 5 Haywood 98 (1863);
Trammell v. Bassett, 24 Ark. 499 (1866);
Keighly v. Bell, 4 Fost. and Fin. 790 (1866);
Christian County v. Rankin, 2 Duvall 502 (1866);
Wiggins v. U. S., 3 Court of Claims 412 (1867);
McCall v. McDowell, 1 Abbott, 212 (1867);
Johnson v. Jones, 44 Ill. 142 (1867);
Weatherspoon v. Woody, 5 Cold. 149 (1867);
Terrill v. Rankin, 2 Bush 53 (1867);
Sellards et al. v. Zomes, 5 Bush 90 (1868);
Hogue v. Penn, 3 Bush 663 (1868);
Wilson v. Franklin, 63 N. C. 259 (1869);
Dills v. Hatcher, 6 Bush 606 (1869);
Ferguson v. Loar, 5 Bush 689 (1869);
Teagarden v. Graham, 31 Ind. 422 (1869);
Bryan v. Walker, 64 N. C. 141 (1870);
Holmes v. Sheridan et al., 1 Dillon 351 (1870);

The rule established by the decisions seems to be this: An order emanating from a military superior, which in fact he is not legally authorized to give, is under no circumstances a defense in an action for damages against an inferior who executes it; or, as stated by Winthrop⁴:

"An order which is in fact illegal—which commands the doing of an act which is unlawful or legally unauthorized—can, however regular, proper, or just it may appear on its face, protect no one concerned in the performance; that the superior who gives it and causes its execution, and the inferior who actually executes it as ordered, will both, or either, be liable in damages for a trespass to any party aggrieved."

4. The decisions in a few cases and the dicta in many are somewhat at variance with the rule as above stated.

For instance, in *Tramwell v. Bassett*, 24 Arkansas 499, the court held a plea to an action of trespass good, which set up the existence of a civil war, that the defendants were soldiers in that war, and that the acts complained of were done by order of their commanding officer.

The court in this case made a distinction between the liability of enlisted men and officers in such cases, apparently on the untenable ground that orders to officers were less obligatory than orders to enlisted men.

Again, in the case of *Keighly v. Bell*, 4 Foster and Finlason, 790, Judge Willes is reported to have said:

"I believe that the better opinion is that an officer or soldier acting under the orders of his superior not being necessarily or manifestly illegal—would be justified by his orders."

So in the case of *McCall v. McDowell*, 1 Abbott, 212, the court said:

"Except in a plain case of excess of authority, where at first blush it is apparent and palpable to the commonest understanding that the order is illegal, I cannot but think that the law should excuse the military subordinate when acting in obedience to the orders of his commander."

"Between an order plainly illegal and one palpably otherwise—particularly in time of war—there is a wide middleground, where the ultimate legality and propriety of orders depends or may depend upon circumstances and con-

Milligan v. Hovey, 3 Bissell 13 (1871);
McLaughlin v. Green, 50 Miss. 453 (1874);
Koonce v. Davis, 72 N. C. 218 (1875);
Bates v. Clark, 95 U. S. 204 (1877);
Head v. Porter, 48 Fed. Rep. 481 (1891);
Stanley v. Schwalby, 85 Tex. 348 (1892);
In re Anderson, 94 Fed. Rep. 487 (1899);
Franks v. Smith, 142 Kentucky 232 (1911).

⁴Winthrops' Military Law and Precedents, 2d Ed., Vol. II, p. 1386.

ditions of which it cannot be expected that the inferior is informed or advised. In such cases justice to the subordinate demands, and the necessity and efficiency of the public service require, that the order of the superior should protect the inferior; leaving the responsibility to rest where it properly belongs—upon the officer who gave the command.”

In this case, however, the decision as to the subordinate was not based on the foregoing reasoning, but on the Act of May 11, 1866, which made the order of any military superior a defense to such an action.

4½. In *Herlihy v. Donohue, et al.*, it appeared that two subordinate officers and certain enlisted men were ordered to destroy certain liquor, which they did, the situation being such that such an order might have been lawful. In a suit against the officer who gave the order and the two subordinates the Supreme Court of Montana held that only the former was liable. (161 Pac. Rep. 164.)

The court said:

“If the order is one which the superior might lawfully make, the inferior cannot refuse obedience until he shall have investigated the surrounding circumstances and determined for himself that they justify the order in the particular instance. If, on the other hand, the order is so palpably illegal or without authority that any reasonably prudent man ought to recognize the fact, obedience thereto furnishes no excuse for a wrongful act, even though disobedience may subject the offender to punishment at the hands of a military tribunal.”

5. Certain objections to the rule of exemption contended for in the *McCall* case appear when we consider the application of such a rule to easily supposable cases, and examine the principal assumptions on which it is founded.

The rule proposes to exempt inferiors from liability for damages caused by them in carrying out orders in all cases except “where at first blush it is apparent and palpable to the commonest understanding that the order is illegal.”

This seems to be an uncertain standard to go by. What is palpable to one is frequently far from being so to another, even among persons of uncommon understanding. How often do we see dissenting opinions animadverting on the majority holding as “palpably,” “plainly,” or “obviously” wrong.

Moreover, such a rule would work an injustice by exempting those inferiors whose understanding was above the commonest, and who in fact appreciated the illegality of their acts, and at the same time holding accountable those who, through automatic, unthinking, obedience to orders, or through dense ignorance were in fact oblivious of wrong doing.

The position of a plaintiff under such a rule might easily be peculiarly difficult.

He must find the particular officer among the military hierarchy who originated the illegal order, and to do this may have to resort to a succession of suits against the inferiors of that officer, each of whom reveals the identity of his next superior in exculpating himself; and, as a practical matter, it is not at all unlikely that, when finally located, the superior might succeed in escaping liability on the ground that his orders as given by him did not warrant the action taken by the person who executed them.

The assumptions of injustice to the subordinate and injury to the public service do not seem to be correct. In any case where the subordinate is really without fault and only technically liable, he would have an action for indemnity against the superior who gave the order,⁵ and it would be difficult to show any appreciable injury to the public service resulting from the frequent application of the rule that holds the subordinate liable.

6. Whatever may be the actual merits of the opposing views, the rule in tort actions appears to have been definitely settled substantially as stated by Winthrop and has been applied in some extreme cases.

In *Milligan v. Hovey*, 3 Bissell 13, members of a military commission, acting as such under military orders in a case where the commission had no jurisdiction, were held liable in an action for wrongful arrest and imprisonment, although the want of jurisdiction was by no means apparent to men of uncommon understanding and required a decision of the Supreme Court to determine it.

In *Bates v. Clark*, 95 U. S. 204, an army officer obeying the orders of his superior was held liable for seizing certain whiskey, which, had it been located in Indian country he would have been authorized to seize. The officer believed in good faith and on reasonable grounds that it was Indian country, and it took a judicial demonstration of some length to show that it was not.

7. The only exemption in favor of the inferior who acts solely in bona fide obedience to illegal orders is from exemplary or punitive damages.⁶

As a practical matter, however, an inferior, who is in *fōrō cōn-*

⁵Cooley on Torts, 3d Ed., Vol. I, pp. 255, 256.

⁶*Johnson v. Jones*, 44 Ill. 142;

McLaughlin v. Green, 50 Miss. 453;

Milligan v. Hovey, 3 Bissell 13.

sciētiaē is excusable for the harm he has done, has little to fear from the operation of the rule that makes him liable.

To meet such cases arising in the civil war, general acts of indemnity were passed or adopted, and to meet particular cases Congress has occasionally relieved officers from the judgments against them, as was done in Colonel Mitchell's case. (Act March 11, 1852, 10 St. 727.)

8. The rules applicable to cases of military inferiors, who, in complying with illegal orders of their superiors, do acts which, did the military relation not exist, would be criminal, do not appear to be definitely settled.

The extreme penalty for disobedience of lawful military orders, and the resulting dilemma in which a well-meaning soldier may be placed, were the ordinary rules of criminal law held applicable, of being compelled at his peril, correctly and perhaps instantly to pass upon the legality of such orders, have led many to consider what modification might or should be made in the ordinary rules in order to rescue the soldier from the penal consequences of acting under a wrong guess.

9. As might be expected the views vary from that of the extremist on the military side who, impressed with the importance of instant, unthinking obedience, contend that any such act is justified which is not instantly perceived to be manifestly and clearly illegal, to that of Bishop and other civilians who view the matter as if the soldier proceeded self-moved.

And as might also be expected the true rule will probably be found somewhere in between these extremes, and which while not creating a new ground of justification in favor of a soldier who carries out orders in good faith will nevertheless make such orders available and useful to him in his attempt to escape liability.

10. The cases involving this question that have been found are cited in the notes,⁷ and as they are not numerous a brief review of the

⁷*U. S. v. Bright*, Federal Cases 14, 647 (1809);
U. S. v. Jones, 3 Wash. C. C. 209 (1813);
Rex v. Thomas, 4 Maule & Selwyn 414 (1816);
U. S. v. Bevans, 24 Fed. Cases No. 14, 589 (1816);
Comm. v. Blodgett, 12 Met. 56 (1846);
State v. Sparks, 27 Texas 627 (1864);
Riggs v. State, 3 Cold. 85 (1864);
Jones v. Commonwealth, 34 Kentucky 34 (1866);
Reg. v. Stowe, 2 Nova Scotia Dec. 121 (1870);
U. S. v. Carr, 1 Woods 480 (1872);
Comm. v. Shortall, 206 Pa. St. 165 (1903);
Manley v. State, 137 S. W. 1137 (1911).

facts, decision, and reasoning in some of them will be made.

In *U. S. v. Bright*, Federal Cases No. 14, 647, tried before Judge Washington in 1809, the facts in brief were as follows:

In January, 1803, a decree in favor of one Olmsted and against two women, the representatives of the deceased treasurer of the State of Pennsylvania, was entered in the United States District Court of Pennsylvania.

The State of Pennsylvania being a claimant for the subject matter of the suit, the Legislature of that State, acting under a belief in the invalidity of the decree of the District Court, passed an act in April, 1803, which among other things required Mrs. Sergeant and Mrs. Waters, the representatives of the deceased treasurer, to pay into the treasury of the State the money received by them without regard to the decree of the District Court, and directed the governor of the State to protect the persons and property of these two women from any process which might issue out of the Federal Court.

An execution having been awarded by the United States court to carry out its decree, General Michael Bright, commanding a brigade of state militia received orders from the governor of Pennsylvania immediately to have in readiness such a portion of the militia under his command, as might be necessary to execute the order, and to employ them to protect and defend the persons and property of the two women from and against any process founded on the decree of the United States District Court, and in virtue of which any officer under the direction of any court of the United States might attempt to attach their persons or property.

A guard was accordingly placed at the houses of the two women, and it was admitted that the defendants with full knowledge of the character of the marshal of the district, of his business, and of his commission, and the process which he had to execute having been read to them, opposed with muskets and bayonets the efforts of the marshal to serve the writ and by such resistance prevented him from serving it.

In an elaborate charge Judge Washington established the validity of the decree of the District Court, and that neither the governor nor the Legislature could legally authorize the defendant to resist the process founded thereon.

The judge continued:

"But it is contended that the defendants standing in the character of subordinate officers to the governor and commander-in-chief of the state was

bound implicitly to obey his orders, and that although the orders were unlawful still the officer and those under his command were justified in obeying them.

"The argument is imposing but very unsound. In a state of open and public war where military law prevails and the peaceful voice of the municipal law is drowned in the din of arms, great indulgencies must necessarily be extended to the acts of subordinate officers done in obedience to the orders of their superiors.

"But even there the order of a superior officer to take the life of a citizen or to invade the sanctity of his house and to deprive him of his property would not shield the inferior against a charge of murder or trespass."

The court here cites *Little v. Barreme*, 2 Cranch, 176, in support of the foregoing and concludes:

"This is said to be a hard case upon the defendants because if they had refused obedience to the order of the governor, they would have been punished by the state. I acknowledge it is a hard case, but with this we have nothing to do if the law is against the defendants."

The defendants were convicted and sentenced to fine and imprisonment, but were immediately pardoned by the president.

The Jones case (*U. S. v. Jones*, 3 Wash. C. C. 209) was as follows:

Jones was first lieutenant of a privateer. He was indicted for piracy, and among other defenses urged was that of obedience to orders of his captain.

Judge Washington on this point said:

"The only remaining question of law has been raised in this case is that the prisoner ought to be presumed to have acted under the orders of his superior officer which it was his duty to obey. This doctrine equally alarming and unfounded underwent an examination and was decided by this court in the case of General Bright. It is repugnant to reason and general law of the land.

"No military or civil officer can command an inferior to violate the laws of his country nor will such command excuse much less justify the act. Can it for a moment be pretended that the general of an army or the commander of a ship of war can order one of his men to commit murder or felony? Certainly not.

"In relation to the Navy the 14th Article speaks cautiously of the lawful orders of superiors.

"Disobedience of an unlawful order must not of course be punishable, and a court-martial would in such a case be bound to acquit the person tried upon a charge of disobedience.

"We do not mean to go further than to say that the participation of the inferior officer in an act which he knows or ought to know to be illegal will not be excused by the order of his superior."

In *Rex v. Thomas*, 4 Maule & Selwyn 414, the defendant was a sentinel on board a man-of-war when she was paying off. He was

given orders to keep off all boats with certain exceptions, and was given a musket with blank and ball ammunition. The boats pressed, upon which he called repeatedly to them to keep off. One of them persisted and came close under the ship, whereupon he fired at a man who was in the boat and killed him. It was put to the jury to find whether the sentinel did not fire under the mistaken impression that it was his duty and they found that he did.

The judges were unanimous that it was nevertheless murder, but a proper case for a pardon.

In *United States v. Bevans*, 24 Federal Cases, No. 14, 589, a sentry indicted for murder attempted to justify the act under orders of a superior to run through the body any man who used abusive language.

Judge Story in charging the jury said:

It is argued by the counsel for the prisoner that it is indispensable for the discipline of the naval service that such orders should be given and should be instantly executed and that a power of unlimited and arbitrary discretion resides in the officer of the ship to compel obedience of all commands, at all times and under all circumstances, even by taking away life.

"I confess that it never occurred to me until this trial that any person in this country ever dreamed of the existence of such an arbitrary power.

"This is emphatically a government of laws not of men.

"The military and naval forces are created by the laws and regulated by a code which ascertains their powers and enforces their duties. * * * The arbitrary power of life and death is not committed even to the president of the United States who is commander in chief of the army and navy, much less is it confided to the commander of a ship and least of all to a private sentry on duty.

" * * * Such an order would be illegal and void and not binding upon any person and the party who should give the order equally with the party who should execute it would be involved in the guilt of murder * * *. It is not to be imagined from this that officers in the navy or not in any case authorized to take away life in enforcing the duties of their stations. They stand in this particular upon the same grounds as civil officers. They have a right in case of necessity to enforce obedience to orders and a performance of duties by the punishment of death. But the necessity must be a clear and urgent one. The orders must be of a nature that require instant obedience, and the force employed must be such as the occasion indispensably requires.

"If for instance as the case put at bar where the ship is on fire and the fire is advancing to the magazine the party refuses to assist, or to obey the lawful orders of his officers, the latter may enforce obedience at the point of the bayonet if it can not be otherwise compelled.

"In the present case it is the decided opinion of the court that if orders were given to the sentry to run a man through the body who should abuse the sentry by reproachful words only, these orders were unlawful and cannot justify or excuse the homicide."

In *Commonwealth v. Blodgett*, 12 Metcalf 56, the facts were these:

The defendants with about twenty other persons armed with military weapons, about the hour of one o'clock at night broke into and entered the house of Jeremiah Crooks, who kept a tavern in Billingham, Mass., and there seized and bound the four persons named in the indictment, kept them bound for some time and carried them bound into the State of Rhode Island. It appears from the bill of exceptions that an organized attempt was made to overthrow the existing government of the State of Rhode Island by force of arms, that the Legislature had declared martial law, that W. G. McNeill had been appointed major-general and commander-in-chief of the forces raised in the State to oppose the insurrection, that the insurgents organized and in military array were stationed in some force in Chepachet and Woonsocket villages, bordering the line of Massachusetts. It further appears that on the evening of the 27th of June the camps of insurgents at Chepachet and other persons there assembled were advised to disperse; * * * that various orders were given with a view of arresting the fugitives whether within the limits of the state or not, to the extent of fifty miles from Chepachet; that by order of Major Martin the defendant Blodgett, who was in the military service of the state, with the other defendant and about twenty men proceeded as before stated and arrested and bound the prisoners named in the indictment.

The court held that one State of the Union in time of insurrection and civil war in that State has no authority to give orders to her troops to pass over the lines and into the territory of another State to protect itself against insurgents and to capture her rebel citizens who have recently fled over those lines, and such orders cannot shield her citizens or soldiers from being criminally responsible in the courts of another State for their seizing such insurgents, though such citizens or soldiers, when acting under such orders, are subject to martial law in their own State; *unless* there be a necessity or probable cause of necessity for the defense or protection of the lives and property of the citizens of such other State or for the defense of the State itself, that the acts directed by such orders should be done. And of the necessity or probable cause of necessity the jury and not the authorities of such other State are the ultimate judges.

The court said through Chief Justice Shaw:

"The facts show that the proceeding of Blodgett and others in passing over the lines of Massachusetts and doing the acts which are the subject

of this prosecution though ordered by Major Martin, acting under the general authority of General McNeill, was not the act of the State of Rhode Island either by special authority or subsequent ratification. * * * The act of the defendants then being plainly a violation of the rights and laws of Massachusetts and of the legal rights of persons lawfully within its protection being denied and repudiated as an act of the State of Rhode Island, it follows as a necessary legal consequence that it was a lawless and unjustifiable act of violence on the part of the defendants subjecting them and all who assisted them to be punished for such violation of our laws."

With reference to the contention that men ought not to be held responsible for acts done in obedience to orders which they are compelled to obey under severe military discipline, the court said:

"But this is not the true principle and it would be dangerous in the extreme to carry it out into its consequences.

"The more general and familiar rule is that he who does acts injurious to the rights of others can excuse himself as against the party injured by pleading the lawful commands only of a superior whom he is bound to obey. A man may be often so placed in civil life and especially in military life as to be obliged to execute unlawful commands on pain of severe penal consequences. As against the party giving such command he will be justified; in *fōrō cōnsciētiāe* he may be excusable, but towards the party injured the act is done at his own peril and he must stand responsible."

In the case of Major General Hutchinson, 9 Cox Criminal Cases, 555, an indictment was preferred against him for the death of a man resulting from artillery practice at Plymouth, negligence being imputed to the accused.

In charging the jury Justice Byles said: "If in using the place for firing, although it might be too low for safety, he was simply obeying the military orders of his superior, in my opinion he would not be guilty of manslaughter."

In *State v. Sparks*, 27 Texas 627, Major Sparks claiming to act under the orders of General Magruder, both being officers of the Confederate service, seized certain persons held by the sheriff under orders of the Supreme Court pending hearing on writ of habeas corpus. He was attached for the contempt and case tried before the Supreme Court.

The court held as follows:

"An illegal act cannot be justified by an order from superior authority no matter how high the source from which such order emanates. Military officers are bound to obey all legal orders of their commanders, but there is nothing better settled, as well by the military as the civil law that neither officers nor soldiers are bound to obey any legal order of their superior officers. On the contrary their duty is to disobey such orders.

"The orders of a military commander to his subordinates furnish to the

latter no justification for his forcible interference with the jurisdiction and disregard of the lawful authority of a civil court.

"But although a subordinate military officer must not obey an unlawful order of his superior in command, yet, as he acts at his peril in disobeying such order it should be held greatly to extenuate the offense committed by the subordinate in the execution of it.

"Under such circumstances, the superior officer becomes the principal offender, and will it seems be required to purge himself of the contempt."

In *Riggs v. State*, 3 Coldwater 85, Riggs, a soldier, received an order from his superior officer to go with a certain scouting party. While on the scout certain members of the party murdered one Captain Thornill; but there was no proof other than the fact of his presence that the defendant aided or abetted the unlawful act. On appeal the conviction was reversed, the court holding as follows:

"A soldier is not bound to obey an order clearly illegal. A soldier is bound to obey the *lawful* orders of his superiors, or officers over him, and his acts in obedience to these orders will constitute no offense as to him. But an order illegal in itself and not justified by the rules and usages of war so that a man of ordinary sense and understanding would know when he heard it read or given that the order was illegal would afford the private no protection for a crime under such orders.

"If the order is not clearly illegal he must obey. An order given by an officer to his privates which does not expressly and clearly show on its face or in the body thereof its own illegality the soldier would be bound to obey and such order would be a protection to him."

In the course of the opinion the court said:

"The soldier in this case was detailed to go with the party and it did not appear that any further order was given him or whether he knew what the purpose was. He had no right to inquire whether that purpose was lawful and if he was present under that order he would not be liable unless he assisted in the killing."

In *Queen v. Stowe*, 2 Nova Scotia Decisions, 121, the defendant, a corporal of the 16th regiment, was tried for the murder of James White, a private of the regiment, and convicted of manslaughter. It appears from the evidence that White having been placed in confinement while in a state of intoxication the defendant with two men were ordered by Stevens, a sergeant of the regiment, to have the deceased tied, so that he could not make a noise by striking and kicking. The order was not executed in such a manner as to put an end to the noise entirely and a second order was given to tie up White so that he could not shout. In carrying out the latter order Stowe caused White to be placed on the floor face downward with his hands cuffed behind his back, a rope was fastened to his feet which were drawn up

behind his back and the rope passed over his shoulders and across his mouth and back again to his feet.

White died while so tied up, his death being caused or accelerated by such tying.

It was held in reply to two questions reserved at the trial, that whether the illegality consisted in the order of the sergeant or in the manner in which it was carried out, Stowe might properly be convicted.

The court said :

"The first question which suggests itself is whether the order of Sergeant Stevens, necessarily called for the cruel treatment which the deceased experienced at the hands of Stowe. If so, it was an illegal order and being such, Stowe would be liable to punishment for obeying it. If on the other hand the order might have been obeyed without the risk of injury to the deceased then the order would have been legal and the illegality would have consisted in the mode in which it was obeyed. In the former case the guilt would have been shared by the sergeant and his subordinate, in the latter the subordinate alone must bear it.

"A soldier is bound to obey implicitly the commands of his officers but they must be legal commands, for a soldier who does an illegal act cannot plead the commands of his superior officer as a legal defense in a court of justice.

"It may be difficult sometimes for a soldier to decide when the orders of a superior and the laws of the land conflict. In time of war and as against an enemy such a conflict can hardly be imagined, but in time of peace the soldier must take care not to violate the law which is equally binding upon him as on other citizens for, as observed by Lord Mansfield, men by becoming soldiers do not cease to be citizens and a soldier is gifted with all the rights and is bound to all the duties of citizens."

In *United States v. Carr*, 1 Woods, 480, there was an indictment for murder.

The facts were these :

Both the prisoner and the deceased were soldiers. On the 13th of July, 1872, the prisoner was sergeant of the guard at Fort Pulaski. About 7 p. m. a drunken quarrel occurred between some of the soldiers at the fort. Sergeant Beel, attempting to suppress the disorder, was taking Corporal McKinley to the guard house when he was set upon by other soldiers and knocked down and left insensible on the ground. A call was then made for the sergeant of the guard. The prisoner and three men of the guard at once crossed the parade to the scene of the disorder. The prisoner gave Sergeant Shires, who was one of the disorderly soldiers, in charge of two men of the guard to convey him to the guard house. Shires had lost his cap and when he asked leave to get it, the prisoner struck him with the butt of his musket

and knocked him down. At this point the deceased approached the prisoner and said to him: "You are a damned mean man to knock a man down in that way." The prisoner then made an attempt to run his bayonet into deceased, who avoided the thrust and turned and commenced running towards his quarters. Prisoner raised his piece to fire. It was a half cock. He brought it down, cocked it, raised it again and fired at deceased who was at the time running from prisoner towards the quarters. The ball entered the back of the deceased near the spine. At the time he was shot the deceased was eight or ten yards from prisoner. He died in about ten minutes.

It is disputed whether the deceased was trying to suppress the disorder among the soldiers at the time the prisoner came up. There was also some evidence tending to show that the musket of the prisoner was accidentally discharged, and also that the prisoner acted under orders of the ranking sergeant of the fort.

Judge Woods charged the jury as follows:

"Nor will any order of a superior officer to an inferior in rank justify the willful killing of a person under the peace and protection of the law. A soldier is bound to obey only the lawful orders of his superiors.

"If he receives an order to do an unlawful act he is bound neither by his duty nor his oath to do it. So far from such order being a justification, it makes the party giving the order an accomplice in the crime. For instance an order from an officer to a soldier to shoot another for disrespectful words merely would, if obeyed, be murder both in the officer and soldier."

In *Commonwealth, ex rel. Wadsworth v. Shortall*, 206 Penn. St., 165, the facts were as follows:

The governor of the commonwealth issued a general order calling out a division of the militia for the purpose of preserving the public peace in certain counties in which a strike of miners was taking place and in which tumults, riots and mobs prevailed.

The militia was called out and the general in command placed a corporal's guard at a house that had been attacked by dynamite and directed the members of the guard if any attempt was made upon the house or any person approached the house and failed to halt when directed, to shoot to kill. One of the sentries near midnight discovered a man approaching the house and he called upon him four times to halt. The man disobeyed the order and the sentry shot and killed him.

These facts were not disputed.

The court held that the order of the governor was a declaration of qualified martial law, that within its necessary field and for the accomplishment of its intended purpose it is martial law with all its

powers; that while the military are in active service in the suppression of disorder and violence their rights and obligations as soldiers must be judged by the standard of active war; that a soldier is bound to obey an order given by his superior officer which does not expressly and clearly show on its face or in the body thereof its own illegality, and such order will be a protection to the soldier, and that a homicide by a member of the militia called out to suppress disorder, committed without malice in the performance of a supposed duty as a soldier, and under the order of an officer, is excusable unless it is manifestly beyond the scope of the militiaman's authority or is such that a man of ordinary understanding would know is illegal.

The court cited Hare's Constitutional Law, 920; *U. S. v. Clark*; *McCall v. McDowell*; *United States v. Carr*; and *Riggs v. State*, and then continued:

"Applying these principles to the act of the relator it is clear that he was not guilty of any crime. The situation as already shown was one of martial law, in which the commanding general was authorized to use as forcible military means for the suppression of violence as his judgment dictated to be necessary.

"The house had been dynamited at night and threatened again. With an agent so destructive, in hands so lawless, the duty of precaution was correspondingly great. There was no ground for doubt as to the legality of the order to shoot.

"The relator was a private soldier and his first duty was obedience. His orders were clear and specific and the evidence does not show that he went beyond them in his action. There was no malice for it appears affirmatively that he did not know, the deceased and acted only on his orders when the situation appeared to call for action under them."

In *Manley v. State*, 137 Southwestern, 1137, a member of the National Guard was indicted for murder committed in carrying out orders to prevent people from entering a certain enclosure during a celebration.

On appeal it was urged as error that the court below excluded evidence that the defendant's superior officer had directed him to keep the people out of the enclosure at all hazards.

The court said:

"The witness, as an officer superior in rank, should have been permitted to state that he had given the appellant instructions to keep the people out of the enclosure; but even if he commanded at all hazards, this would not authorize appellant to kill a person or violate the law in order to do so. Appellant under such instructions would be authorized to use only such means as were necessary to accomplish this without taking life or committing an assault."

11. The opinions in some of the foregoing cases support the

view that a military order not manifestly illegal is a justification, but on examination it will be found that the decisions in these cases do not depend upon any such doctrine.

In the *Hutchinson* case, Justice Byles certainly did not mean that a military order would be a defense in every case of manslaughter through negligence, however gross such negligence might be.

Probably all he meant was that such orders were in general relevant to the question of negligence, and that, in view of the facts shown in this particular case, the order to use the place for artillery practice in his opinion settled the question in favor of the defendant.

Riggs v. State is a case often cited in support of the doctrine that an order not plainly illegal is a defense. But outside of the dicta in the opinion the case furnishes no support whatever to that doctrine.

The order to go with the scouting party was plainly legal and was none the less so because others in the party may have had orders to do an illegal act.

The legal order to go with the party furnished the defendant with the means of establishing the innocence of his presence at the time of the shooting, and thereby disconnecting himself from the acts of the others.

Commonwealth v. Shortall is a similar case. The court expressly decided that the order of the sentry was legal and that his acts were in strict conformity to his orders. This alone sufficed to relieve the sentry from any criminal liability and left no occasion to resort to the broader rule of exemption asserted in the opinion of the court.

12. The views of most of the military text writers are, of course, in accord with the broader rule; and the more restricted doctrine of some of the cases is vigorously assailed as involving the grossest injustice to the individual and the most disastrous consequences to the discipline of the army.

O'Brien says:⁸

"The general rule of justice and natural equity is that a subordinate should be justified for the performance of any act in obedience to orders, which was not manifestly and clearly illegal."

Clode says:⁹

"Such are the grounds upon which the officer would be justified in giving the order; and the justification of the soldier in obeying it would be, first, under the rule of the Common Law, that an Inferior, in an ordinary criminal case, might be held justified in obeying the directions—not obviously improper or contrary to law—of a Superior Officer, that is, if the Inferior acted honestly

⁸American Military Law and Courts-Martial, 1846, p. 83.

⁹Military Forces of the Crown, Vol. II, p. 151, Sec. 68.

upon what he might not unreasonably deem to be the effect of the orders of his Superior."

The non-military text writers in general follow the actual decisions of the courts in making the liability depend on the illegality of the order irrespective of whether it was or was not plainly so.

Hare says that the general rule is that the command of a superior will not justify the commission of an act which he cannot legally authorize the subordinate to perform.¹⁰

Bishop states the rule as follows:¹¹

"The command of a superior—as of a military officer to a subordinate—will not justify a criminal act done in pursuance of it. * * * In all these cases the person doing the wrongful thing is guilty the same as though he had proceeded self-moved.

Dicey states that where a soldier is put on trial of a charge of crime obedience to superior orders is not of itself a defense.¹²

14. To adopt a new rule of substantive law making obedience to military orders not palpably illegal a distinct ground of justification for criminal acts is believed to be objectionable.

Such a rule is too indefinite to be susceptible of anything like a uniform application; and in any case likely to arise under it the soldier who receives the order would very likely be as much at a loss to determine whether the required degree of illegality existed as to determine the fact of illegality itself.

Moreover, the fact that military orders are frequently communicated orally and in general terms and thus easily misunderstood and not easily proved in their exact terms, together with the prohibitions against self-incrimination and against conviction in the face of a reasonable doubt, would in the practical administration of justice under such a rule operate to give immunity in many cases to all concerned in the criminal act an immunity which could not fail to induce in many military persons a lack of caution with respect to the very objects for which soldiers are maintained.

On principle and authority it is believed that obedience to military orders is not *of itself* a justification.

15. But this does not mean that the fact that a soldier acted in obedience to a superior's orders is unavailable to him in his defense as a stepping stone to a recognized ground of justification.

And it is believed that a mistake is made in attempting to engraft upon the substantive criminal law a new rule of justification in favor

¹⁰American Constitutional Law, 1889, p. 914.

¹¹New Criminal Law, 8th Ed., Vol. I, Sec. 355.

¹²Law of the Constitution, 1908, p. 298.

of soldiers who obey orders, instead of the much easier and equally effective method of contending for a rule of evidence which will accomplish the same results; thus availing ourselves of an expedient by which the judges have indirectly but in effect molded and developed the law while disclaiming any right to do so directly. (See Thayer's Cases on Evidence, Chapter I, Section II, note.)

A soldier who obeys an illegal order with full knowledge of the facts should not be allowed to justify his violation of the criminal law under such order any more than a civilian.

The general and necessary rule that ignorance of law is no excuse operates with extreme harshness in many cases, and a soldier to claim exemption from punishment for acts done under orders ought therefore to rest his claim on some other ground than injustice to himself.

The argument ordinarily advanced is that discipline—the *sine qua non* of an army—would be unattainable were well-meaning soldiers compelled to choose between alternative courses under penalty for a mistake.

To dispose of this argument it seems sufficient to say that actual experience does not warrant the assumption made therein, inasmuch as discipline has been maintained in the face of adverse rulings by the courts.

But mistake of fact seems to be a defense that can and should be peculiarly available to a soldier acting under orders:

With regard to this defense in general, Bishop says:¹³

"What is absolute truth no man ordinarily knows, all act from what appears, not what is. If persons were to delay their steps until made sure, beyond every possibility of mistake, that they were right, earthly affairs would cease to move; and stagnation, death, and universal decay would follow. All, therefore, must and constantly do, perform what else they would not, through mistake of facts. If their minds are pure; if they carefully inquire after the truth, but are misled, no just law will punish them, however criminal their acts would have been if prompted by an evil motive, and executed with the real facts in view."

A soldier of subordinate grade is usually in the dark as to many facts pertinent to the question of the legality of his orders; and where, as will frequently be the case, it is imperative that he should not delay or impracticable for him to inquire into the facts, he should not be required to do either.

Therefore, where an order is given him by a superior, whom he is entitled to regard as better informed than himself and whom he

¹³New Criminal Law, 8th Ed., Vol. I, Sec. 303.

must under military law presume to be acting legally unless something to the contrary appears, such order should be given great evidential value toward establishing such a state of belief or ignorance on the soldier's part as would exculpate him were such believed condition of affairs actual.

Some such views are advanced by Hare and by Stephens.

Hare says:¹⁴

"A subordinate stands as regard to these principles in a different position from the superior whom he obeys and may be absolved from liability for executing an order which it was criminal to give.

The question is, as we have seen, had the accused reasonable cause for believing in the necessity of the act which is impugned? and in determining this point, a soldier or a member of the posse comitatus may obviously take the orders of the person in command into view as proceeding from one who is better able to judge and well informed; and if the circumstances are such that the command may be justifiable, he should not be held guilty for declining to decide that it is wrong with the responsibility incident to disobedience unless the case is so plain as not to admit of reasonable doubt."

Stephens says:¹⁵

"In all cases in which force is used against the person of another, both the person who orders such force to be used and the person using that force is responsible for its use and neither of them is justified by the circumstance that he acts in obedience to orders given him by a civil or military superior, but the fact that he did so act and the fact that the order was apparently lawful, are in all cases relevant to the question whether he believed in good faith and on reasonable grounds in the existence of a state of facts which would have justified what he did apart from such orders."

This rule, broadened so as to apply where the order, under the circumstances known to the soldier, could be legal, and strengthened so as to make such facts not only relevant but effective to raise an affirmative presumption is believed to be the rule that should be adopted by the civil and military courts in all criminal cases, except that the rule should be modified so as to provide for cases where the facts as believed by the soldier would justify him in acting under orders, but not without.

To illustrate:

A sentry over prisoners of war is present at an altercation between one of them and his superior officer, who directs the sentinel to take the prisoner out and shoot him.

On such a showing alone, without proof of the legality of the order, it would not even be relevant in his defense; conversely were the order in fact legal (as it would be where the officer carrying out

¹⁴American Constitutional Law, Vol. II, p. 920.

¹⁵Digest of the Criminal Law, Sec. 202.

sentence of a military commission) the sentry could not be convicted by a military court of disobedience of orders.

A soldier in time of war is ordered to seize private property of a citizen, there being nothing in the circumstances as known to the soldier negating a necessity for such seizure.

The order in such a case raises a presumption that the soldier believed in good faith and on reasonable grounds in the existence of a state of affairs justifying the order and his acts under it; and should he disobey the order he would have to show its illegality.

Such a rule would go very far toward eliminating the present differences in the military and civil views of this matter and would enable each forum to dispose of such cases without any injustice that can be recognized as such.

16. In conclusion it may be stated that the sense of military persons founded on actual experience confirms the view that the hardship in such cases whatever rule may be adopted is "more apparent than real."

After a war, general acts relieving soldiers from prosecution for acts done in bona-fide obedience to orders such as were enacted after the civil war may be looked for; and, in ordinary times such cases are not often prosecuted.

Where they are prosecuted by a state the proceeding may sometimes be stopped through habeas corpus by a federal court, and in the rare event of an unjust conviction, a final resort may be had to the pardoning power, as was done in the case of General Bright and his co-defendants.

The practical result, under any rule, is as stated by Hare that a soldier "runs little risk in obeying any orders which a man of common sense so placed would regard as warranted by the circumstances."

17. Below is an alphabetical list of all sources used in the preparation of this paper, except those that have already been cited either in the footnotes or in the body of the paper.¹⁶

¹⁶American Decisions, Vol. 89, p. 616; Vol. 42, p. 54; Vol. 96, p. 274;
American Law Register, January, 1866;
Bacon's Abridgement, Vol. 6, p. 583;
Beck v. Ingraham, 1 Bush 355;
Bell v. Louisville, etc., R. R., 1 Bush 404;
Bramer v. Felkner, 1 Heisk 228;
Brown v. Huger, 21 Howard 305;
Bowles v. Lewis, 48 Mo. 32;
Burdett v. Abbott, 4 Taunt. 449;
Clode, Military Forces of the Crown, Vol. II, pp. 151-152; Vol. I, p. 155-156;
Commonwealth v. Palmer, 2 Bush 570;
Cobbett v. Grey, 4 Ex. Cases 735;

(Since the foregoing was written, legislation of some importance in connection with the questions discussed in this paper has been enacted. Section 1342 of the Revised Statutes, which includes the Articles of War for the government of the armies of the United States, was amended by an Act of Congress, approved August 29, 1916 [39 Stat. 650, et. seq.].

Article 117 provides:

"When any civil or criminal prosecution is commenced in any court of a State against any officer, soldier, or other person in the military service of the United States on account of any act done under color of his office or status, or in respect to which he claims any right, title, or authority under any law of the United States respecting the military forces thereof, or under the law of war, such suit or prosecution may at any time before the trial or final hearing thereof be removed for trial into the district court of the United States in the district where the same is pending in the manner prescribed in section thirty-three of the Act entitled 'An act to codify, revise, and amend the laws relating to the judiciary,' approved March third, nineteen hundred and eleven, and the cause shall thereupon be entered on the docket of said district court and shall proceed therein as if the cause had been originally commenced in said district court and the same proceedings had been taken in such suit or prosecution in said district court as shall have been had therein in said State court prior to its removal, and said district court shall have full power to hear and determine said case.")

Cooley on Torts, Vol. II, p. 631;
Cumming v. Diggs, 1 Heisk. 67;
Cunningham v. R. R. Co., 109 U. S. 446;
Darling v. Bowen, 10 Vermont 148;
Davidson v. Manlove, 2 Cold. 346;
Dacey, Law of the Constitution, p. 281;
Dinsman v. Wilkes, 7 Howard 89;
Dow v. Johnson, 100 U. S. 158;
Dynes v. Hoover, 20 Howard 65;
Eifort v. Bevins, 1 Bush 460;
Fair, In re, 100 Fed. Rep. 149;
Farmer v. Lewis, 1 Bush 166;
Ford v. Surget, 46 Miss. 130; S. C. 97 U. S. 594;
Foster's State Trials, Vol. 14, p. 391;
Griffin v. Wilcox, 27 Ind. 391;
Grisar v. McDowell, 6 Wall. 363;
Grimley, In re, 137 U. S. 153;
Hare's Constitutional Law, p. 906, et seq.;
Hatfield v. Graham, 81 S. E. 533;
Hawley v. Butler, 54 Barb. 490;
Henry v. Gardner, 10 Heisk. 420;
Hess v. Johnson, 3 W. Va. 645;
Hickey v. Huse, 56 Me. 493;
Hough v. Hoodless, 35 Ill. 166;
Ide v. U. S., 25 Ct. Cl. 407;
Ilott v. Wilkin, 3 B. and Ald. 315;
Indemnity Acts. U. S. Statutes at Large, passim; Constitution of Missouri;
Ives Military Law, pp. 106-108;

Kendall v. U. S., 12 Peters 524;
Lewis, In re, 83 Fed. Rep. 159;
Lewis v. McGuire, 3 Bush 202;
Martin v. Mott, 12 Wheat. 30;
McKrell v. Metcalf, 2 Duvall, 533;
Meigs v. McClung, 9 Cranch 11;
Merritt v. Nashville, 5 Cold. 95;
O'Brien, Military Law, pp. 82-84;
Ogden v. Lund, 11 Texas 688;
Opinions of the Atty. Gen., Vol. 2, p. 713;
People v. McLeod, 1 Hill 426;
Pollard v. Baldwin, 22 Ia. 328;
Pomeroy's Constitutional Law, Sec. 254-255;
Price v. Poynter, 1 Bush 387;
Richardson v. Crandall, 47 Barb. 335;
Short v. Wilson, 1 Bush 350;
Simmons on Courts-Martial, Sec. 594-595;
Smith v. Brazleton, 1 Heisk. 44;
Stafford v. Mercer, 42 Ga. 556;
Sutton v. Johnstone, 1 Term. 546;
Sutton v. Tiller, 6 Mo. 593;
Strange, 646;
Taylor v. Jenkins, 24 Ark. 337;
Tyler v. Pomeroy, 8 Allen 480;
U. S. v. Buchanan, 8 Howard 105;
U. S. v. Greiner, 4 Phila. 396;
U. S. v. Lee, 106 U. S. 196;
U. S. v. Lewis, 129 Fed. Rep. 823;
U. S. v. Lipsett, 156 Fed. Rep. 65;
University of Pennsylvania Law Register, Vol. 59, p. 646;
Waite, In re, 81 Fed. Rep. 359; S. C. 88 Fed. Rep. 107;
Walkins, Ex parte, 3 Pet. 208;
Waller v. Parker, 5 Cold. 476;
White v. McBride, 4 Bibb. 62;
Willman v. Wickeman, 44 Mo. 484;
Winthrop's Military Law and Precedents, pp. 445; 881-890;
Yost v. Stout, 4 Cold. 205.

THE RELATION OF LEGISLATIVE ACTS TO THE PROBLEM OF DRUG ADDICTION¹

ALFRED GORDON²

The creation of the new law concerning the abuse of narcotic drugs, and known under the name of the Harrison Narcotic Law, had undoubtedly for its object a useful and humanitarian aim. The legislators, unquestionably, were prompted primarily and chiefly by motives of the highest order. But all legislative acts, being formulated by an individual or collective human mind, are likely to present some weak and ineffective features alongside the most powerful ones. Only further experience with a widespread application of a new law will enable one to ascertain its practicability or impracticability. This will be particularly observed when a legislative act is concerned with a matter of medical or other biological principles. Legislators can see only the purely utilitarian side of certain medical questions. When, however, biological principles and principles of a psychological order are to be considered, legislative acts are frequently found to be inapplicable and inadequate because of the failure on the part of legislators to consider the psycho-physical operations of an individual. This remark finds its direct illustration in the creation of the Harrison Law. No doubt the principle underlying the new law is excellent and most commendable. There is no doubt that it aimed essentially to arrest an indiscriminate use or rather abuse of narcotics and thus to prevent the physical, moral and intellectual ravages which the narcotics are likely to produce and actually do produce in the individual and in the community. But after the few past years of experience with the action of this law, can any one say that the desired results have been obtained? Indeed can they be obtained? Is it possible by any law to arrest a craving which is within the individual but which by the nature of its morbidity is not dependable on extraneous factors? Can a pathological mental condition which has created a pathological vegetative life be remedied by a forceful privation of a remedial agent which became a physiological necessity to this morbid life? Have the authors of the Harrison Law considered the untold suffering inflicted on the victims of the disease called "Morphinism" by suddenly withdrawing the drug from them? Have they considered the host of torturing manifestations leading to syncope and even to death because of "abstinence" from the narcotics after the latter have been used by the individual for some time? Has the

¹Address delivered before the Medico-Legal Society of New York, February 21, 1917.

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new law provided for the great army of sufferers which are left on our hands because of their helplessness due to compulsory abstinence?

There is no doubt that Congress has no power to legislate directly for the purpose of safeguarding the health and morals of the public, nevertheless, the Harrison Law, as I understand, had primarily in view those very same principles besides the question of a revenue measure. As to the latter, the law had to be drawn as a revenue measure in order that it might be constitutional and enforceable by the courts. But so far, has it accomplished its primary purpose? Has it actually placed in the power of the country a prophylactic measure to prevent moral and intellectual degeneration which, indeed, should be its chief aim?

In order to demonstrate sufficiently the relationship of legislative acts to the great problem of drug addiction, let us briefly review the actual mental and physical condition of our unfortunate morphinists and cocainists. We will then readily see that laws, no matter how well intended, they may be, are, to say the least, not the adequate means to solve a problem whose essential features are intimately associated with the psychological complexes of the individual and dependent upon them.

From a study of 171 cases of morphinomania and cocainomania especially undertaken from a neurologic and psychiatric standpoint, the following observations were made. Among the somatic manifestations: pronounced disturbances of digestion, such as nausea, vomiting, loss of appetite, constipation alternating with diarrhoea; cavities in the teeth, falling out of the hair. They all point to disturbances of nutrition. Emaciation may reach an extreme degree. Arterial tension is below normal; the heart action is enfeebled; respiration is disturbed, dyspnoea is marked. Albuminaria is present and is possibly due to a special action of morphine on the medulla (Levinstein). Sterility in women is frequent, but if pregnancy takes place, premature birth or miscarriage is frequent. The eyes show anemia of the retinae. Disturbances of the general sensibility are often marked: paresthesias and neuralgic pains are common, hyperesthesia is most frequent, and is especially so in the feet; tactile sensibility is frequently abolished.

The most disastrous manifestations are observed in the domain of the psychic sphere. Memory is one of the faculties first involved. Amnesia for recent events is striking. It resembles the amnesia of the parietic or of the senile dement. The mental energy is weakened. The aptitude for work is lessened. There is apathy in the patient's thoughts and acts. The moral sense suffers profoundly. The patient

loses the sense of obligation to his family, he loses all affection for his children; he becomes egotistic. The will-power is decidedly deficient. One of my patients, a married woman, frequented a disreputable house, not for sexual reasons, but for the purpose of procuring money for morphine. Another woman became a kleptomaniac for the same reason. Not infrequently these individuals commit excesses of all sorts and even crimes. Deception and lying are common. Sleep is very frequently disturbed. Hallucinations are frequent and those of sight are always terrifying. Hallucinations of vision are most frequent, next in order of frequency are those of hearing. In 60 patients of my series, some of the morbid mental phenomena were characteristic of some of the classical psychoses. Systematized or unsystematized delusions, mostly of the persecutory type, and also those of the expansive type; incoherence, confusion, agitation, depression—were all present. In the cases in which delusions and hallucinations were absent, dementia was a prominent feature. Here there was a childishness in actions, words and demeanor. When spoken to, the patient looks up astonished; if an answer follows, it has either no relation to the questions asked or it will be considerably delayed. The dementia develops very insidiously and increases with years until a complete decrepitude is established. It is the threatening progressive quantitative diminution of mental power that presents the alarming problem for us when we are called upon to counsel and render assistance to the community.

In connection with the main subject of my thesis it will be entirely *apropos* to say a few words on the morbid manifestations of abstinence. Twenty-six of morphin and five of the cocain habitués were kept under observation while the drugs were entirely and suddenly withdrawn. The following symptoms were noticed: both categories of patients presented a picture of extreme suffering; they were restless, full of anxiety, agitated and incapable of listening to others, of reasoning or of reflecting. Delirium and hallucinations were present. Some patients would be taken suddenly with chills, accompanied by twitchings. Others showed a tendency to faint. Insomnia was common and persistent. Some had morbid impulses with a desire to attack. The physical condition of the majority of my patients became quite alarming.

This brief account of the physical and intellectual disintegration in the drug habitués is sufficient to emphasize the disastrous effect of the drugs which constitute a genuine menace to society. In attempting to remedy the growing menace it should be borne in mind that a

longing and craving for the drugs develop after a more or less prolonged period of use. Interference at the proper time, therefore, may be of great utility in certain cases. Legislative acts which have for their object to prevent at the proper time the propagation of this most pernicious habit are most praiseworthy and to be encouraged. A law limiting the prescribing physician to a certain dose of the drug or to a certain number of renewals will be useful provided it does not interfere with the administration of the drug in cases in which human suffering is intense. A law that will impose a heavy penalty with imprisonment on those who sell or give away the drug without regular prescriptions or on those who forge a physician's prescription—is laudable. This is as far as legislative prophylaxis can go. It may by material force interfere with partaking of the drug by individuals who are but in the developmental period of the pernicious habit. Can it actually arrest its development? After a few years of continuous enactment did the Harrison Law succeed fully in this particular respect? I fear it did not. This is the experience of every close observer.

But besides a legislative prophylaxis there is a medical prophylaxis whose aim is by far more important and more effectual than the first one. Its object is to investigate the physiological and especially the psychological factors which are at the very foundation of the acquirement of habit. It delves into the conscious and particularly the sub-conscious world of the individual to discover and bring to the surface those repressed wishes and thoughts, which as we know now, are constantly at work, and which are capable of directing or disorienting our acts during out entire life, and so govern our conduct as a whole. Is it possible that any legislative act and even the best one will have the power to render any assistance in this endeavor? Morphinism usually occurs in individuals with a special make-up of their nervous system. Such persons present deficiency of the intellectual and moral faculties. In them the inhibitory power becomes an easy prey for all abnormal tendencies, particularly for alcoholism, morphinism of cocaineism. The latter are result of a neurophatic constitution, the fruit of hereditary tendencies. In handling such individuals one should remember Ball's dictum, to wit: "Morphinomania is entered by the door of pain, of sexual passion, of sorrow, but also by the door of contagion, viz., imitation."

It is therefore evident that no law established as a revenue measure or as a matter of a policy can pretend to modify in the least degree the foundation upon which the drug addicts' psychological

processes have grown and developed. It would be utterly absurd to foster such expectations. A legal regulation in matters of this sort is naturally narrow in its aims and application. It can attack only the superficial side of the problem. Speaking particularly of the Harrison Narcotic Law, there cannot be any doubt as to its usefulness, despite the many inconveniences it has created, but its usefulness does not extend beyond the limitations outlined above. It cannot aspire to remedy conditions which are out of its control. As it stands, it possesses several provisions which have been misconstrued and which therefore have led to misunderstandings and abuse. The time has arrived, I believe, when a revision of the law would be useful and for this a commission of competent medical men should be appointed to analyze each paragraph of the new law, especially those features of it which have been differently interpreted, as one may judge from contradictory decisions of various courts. Alcoholism, morphinism, cocaineism are deeply rooted individual and social evils, nay, calamities. No effort should be spared to attack them from every possible angle. Laws and other regulations should be frequently revised and corrected in accordance with the deficiencies discovered in their practical applications. The menace is growing and spreading to all classes of societies. Medical science will continue its investigations into the underlying causes of these diseases and render its valuable assistance in formulating biological and therapeutic laws for an intelligent manipulation of the grave problem of drug addiction.

ON THE USE OF THE TERM "FEEBLE-MINDED"

E. A. DOLL¹

The subject of feeble-mindedness is so persistently claiming attention in school and social measurements that it seems not untimely to make a plea for the more cautious use of the term "feeble-minded," especially in reports of investigations in which mental defect is a serious consideration. Research is so rapidly demonstrating the widespread significance of feeble-mindedness and its bearing on social and educational problems, that unless the workers in this field proceed with at least a fair amount of conservatism, there is danger of bringing the subject into disrepute. In fact, the literature already presents some obvious absurdities caused by the ill-considered use of terminology, and the failure to describe the limitations of the studies reported.

Binet and Simon, in 1905, showed that inferior intelligence is the fundamental distinguishing sign of feeble-mindedness, and ultimately devised a Measuring Scale of Intelligence which makes possible the relatively exact determination of intelligence levels, and which, when expertly evaluated and interpreted, throws much light on the analysis of mental states.² This Measuring Scale has so profoundly influenced all subsequent study of mental deficiency that many students are now on the verge of substituting an intelligence status for a diagnosis of feeble-mindedness. But while remaining fully conscious of the essential importance of the intelligence examination in determining feeble-mindedness, we must not permit ourselves to forget that it is not in itself a complete diagnostic method, more especially when only the gross mental age of an individual and not the sum total of mental symptoms obtained in the intelligence examination is employed. It is because even some reputable psychologists, as well as comparative laymen and "amateur Binet testers," apparently accept the intelligence classification as an equivalent of a differential diagnosis that a note of warning should be sounded.

It is sufficient to cite only a few reasons why intelligence status alone (whether expressed as mental age, mental retardation, intelligence quotient, or some other means) does not afford an adequate basis for the judgment of feeble-mindedness: (1) it does not in itself distinguish between developmental and degenerative defects, although this distinction is essential to prognosis; (2) it does not in itself dis-

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²See *The Development of Intelligence in Children*, and *The Intelligence of the Feeble-Minded*, by Alfred Binet and Th. Simon. (Trans. by Elizabeth S. Kite.) The Training School at Vineland, N. J., Vineland, 1916.

tinguish between the superficially intelligent feeble-minded and the intellectually stupid normals, although this distinction is essential to the estimation of social competence; (3) it does not in itself, among young children, distinguish between potential defectiveness and potential normality, although this distinction is essential to early recognition; (4) it does not in itself distinguish between high-grade borderline defectives and low-grade borderline normals, although this distinction is essential to diagnosis. There is not sufficient space at my command to permit me to amplify the argument showing the scientific value of these distinctions, and the practical necessity for making them, but it must be obvious that failure to observe these shortcomings of the intelligence tests may lead one astray in his thinking.

In the minds of the more mature students of mental deficiency, the term "feeble-minded" has consistently been used to describe a condition which is differentiated from normality by *social incompetence due to arrested mental development*. There is as yet no good reason to reject this conception. To be sure it is rather too vague, as a standard, for scientific purposes, and a more exact criterion is much to be desired. But for some time to come it must remain the working basis for study and for developing other concepts.

At the present time no less than six major criteria of feeble-mindedness are employed by diagnosticians.³ (1) It must be shown that the individual in question is, in terms of the classic and legal definition of the British Royal Commission on the Feeble-Minded, "*incapable of competing on equal terms with his fellows, or of managing himself and his affairs with ordinary prudence.*" This standard, with subsequent verbal changes, is still authoritative. For feeble-minded juveniles, the Act of Parliament of 1899 substituted "*incapable of receiving proper benefit from the instruction in the ordinary public elementary schools,*" and this is now the basis of the definition of high-grade mental deficiency in the English Mental Deficiency Act of 1913. But the social and pedagogical standards alone do not constitute the sole criterion of feeble-mindedness, for many persons are not able to compete on equal terms with their fellows or manage their affairs prudently, who nevertheless are not feeble-minded, for example the insane, the non-feeble-minded epileptics, the physically disabled, and the many types of "human derelicts." Likewise many children

³A detailed critical evaluation and description of these diagnostic criteria of feeble-mindedness, with six illustrative clinical cases, is presented in *Clinical Studies in Feeble-Mindedness*, by E. A. Doll. Richard G. Badger, Boston, 1917. Pp. circa 200.

receive no proper benefit from public school instruction who still are not feeble-minded, for example, the motor defectives, the sense defectives, the language defectives, the neural defectives, the physical defectives, in short, the great unclassified host who fill the ordinary "special classes." (2) It is to separate the social and pedagogical defectives who are feeble-minded from those who are normal that the definitions of feeble-mindedness all specify a second criterion, *mental defect*, as the cause of the social incompetence. This supplementary standard eliminates many social incompetents from the feeble-minded class, but does not eliminate some others, like the psycho-pathic and the insane. (3) This is accomplished by a third criterion, which specifies that the mental defect must be caused by *arrest of development*, and not, for example, by degeneration from normal states. Consequently, the term "feeble-minded," if used technically, must imply at least these three considerations: (1) social incompetence, (2) resulting from mental defect, which is (3) caused by arrested mental development.

Three additional criteria are now recognized as aids in determining feeble-mindedness, although they are not themselves essential, but are considered symptomatic of the three just mentioned. (1) The social incompetence is particularly characterized by certain traits of behavior, such as innate limitations in ability to learn or to plan, the absence of judgment and foresight, incapacity for ready adaptation to unaccustomed situations, and many forms of social maladjustment, like poverty, improvidence, social "unconventionality," crimes, and misdemeanors. (2) The mental defect is essentially inferior intelligence level, and is associated with somatic detardation, physical anomalies, and neural defects or diseases. (3) The arrest of development is caused by inherited limitations of development and by various "accidents," that is, specified illnesses, diseases, functional disturbances, and traumas.

Because of these differential characteristics of the feeble-minded, mental deficiency in individuals must be *diagnosed* by a clinical consideration of all of these traits. No authority on the subject has ever ventured to propose any one criterion as the sole standard of feeble-mindedness; all have unqualifiedly recommended the use of the complete clinical syllabus for examination. But on the other hand, no one has shown how to weight the several criteria if they conflict, nor how many and which symptoms constitute a minimum for differential diagnosis. This has tacitly been conceded to be a matter of expert judgment.

For these reasons it is necessary to urge that readers and audiences ought not unreservedly to accept as gospel the reports of investigations which present percentages of "feeble-minded" persons found to be present in school and social groups, unless this judgment of "feeble-minded" is supported by at least some clinical evidence offered in support of the classification obtained by the intelligence tests.⁴ I mean by this, that if the investigator is unable to obtain diagnosis of feeble-mindedness he should state his results in terms of intelligence classification. Then if he wishes to use the term "feeble-minded" for subjects not clinically diagnosed, let him define his use of the term by stating his standard, whether in years of mental age, years of intelligence retardation, range of intelligence quotients, an upper limit of mental level, or what not. This method of presenting results avoids the implication that additional symptoms have been taken into account, and at the same time renders results much more useful and open to subsequent correction, if the intelligence standard undergoes material revision. Nothing is lost and much is gained, for the results have exactly the same significance, but they avoid the challenge of scientific incompleteness and thereby get a better hearing. Moreover, "feeble-minded" connotes quite different states even to professional workers, linked up as it is with historical conceptions. Such workers may not be ready to admit that forty per cent of delinquents are feeble-minded, but may not deny, let us say, that the I. Q.'s of forty per cent of delinquents are under .70. For example, as a result of examining 150 children in the first four grades of a certain school, 27 children were found with I. Q.'s under .70. I should err greatly if I termed these 27 individuals "feeble-minded" on the basis of their intelligence status alone. Perhaps all the 27 *are* feeble-minded, but surely the individual children and their parents have a claim to a more comprehensive consideration of their ultimate social competence. But there is no denying that these 27 are of a definite degree of inferior intelligence, and need special attention and instruction and may not be capable of certain kinds or amounts of work. This fact may disturb but need not antagonize either the parents or the teachers of these children.

⁴It is possible that in the future mental tests can be so interpreted as to dispense almost entirely with this clinical evidence. Binet did so interpret some results of his Measuring Scale (see *Intelligence of the Feeble-Minded*, op. cit.), and some researches are now in progress to demonstrate the validity of such interpretation. But at present these methods of evaluating mental tests are not commonly recognized, and only gross "mental ages" are made use of in the statistical reports.

The field of juvenile delinquency in particular has suffered from this indiscriminate use of terminology and the substitution of intelligence status for clinical diagnosis. The writer, with Mr. L. W. Crafts, has made a critical review and evaluation of the literature in this field, and found a most chaotic confusion of investigating methods and classificatory criteria. Hardly a half-dozen of the studies of the relation of feeble-mindedness to juvenile delinquency can withstand critical analysis.⁵ In many instances the fault is only one of presentation, but the presentation must be the reader's chief basis for opinion. In such instances the results *may be* true, but the reader is left without conclusive evidence.

There is another limitation to the use of intelligence tests alone in judging feeble-mindedness, which is its bearing on the converse judgments of normality. A certain percentage (no one knows how great) of young children prove to be feeble-minded by clinical diagnosis, who classify as normal by their intelligence status. There is also an appreciable percentage of borderline cases of high-grade feeble-mindedness who classify as "borderline," "doubtful," "low normal," or "dull normal" by the intelligence tests, but who prove to be feeble-minded by the evidence of the complete diagnosis. From the standpoint of science and of social welfare, it is just as important to recognize these potential and real defectives instead of terming them "normal," as it is to unwarrantedly term some normals "feeble-minded." In the averages and percentages these two errors compensate to some unknown extent, but the disposition of individual persons should not be made so hastily.

The use of the intelligence examination has enabled us to travel a long distance in a short time along the highways of social and educational readjustments. It is not my intention to underrate its immense value, but to conserve its importance by confining it to its own limits. I myself believe that for averages, and in a remarkably high percentage of individual cases, the intelligence examination, expertly administered and evaluated, not only is the essential basis of the diagnosis of feeble-mindedness, but even proves nearly a complete diagnostic as well as classificatory method, provided that the individual in question is not a borderline case and provided that the demonstrated inferior intelligence is an arrested mental state. Indeed,

⁵As an example of the best of these studies see *The Report of the Psychological Department*, by Dr. Grace M. Fernald, in the Second Biennial Report of the California School for Girls, published by the California State Printing Office, 1916.

in my own experience, not wholly confined to institutional cases, the intelligence method alone and unsupported by the additional clinical data would have erred only by excluding some defectives as normal rather than by including any normals as defectives, as proved by subsequent case histories. We need experimental studies which shall show the percentage of accuracy which can be obtained in mental diagnosis by the use of the intelligence method alone. This method certainly is more exact as a method than is any other part of the clinical syllabus, certainly it is more fundamental, and certainly it is more practicable from the standpoint of time, objectivity, and control. If we can substitute it for the comparatively inexact, time-consuming and subjective methods now employed in diagnosing mental defect we ought all to welcome the change. But we must not anticipate too eagerly, and must remind ourselves that a little ground gained permanently is better than yards of territory that must later be given up.

A STUDY IN THE PSYCHOLOGY OF TESTIMONY¹

CHARLES STILLMAN MORGAN²

In a previous article³ I acquainted the readers of this Journal with a new method of arriving at a sense of the value of courtroom testimony. In writing in the field of legal psychology, however, one feels that it is the exceptional reader who is not cherishing a desire, unexpressed perhaps, that the old order of things be let alone and that this newest intruder be suppressed before it has accumulated the momentum of a rapidly progressing science. To such honestly skeptical readers I hope to bring a sane statement of the place of psychology in legal practice that will enable them to establish more rationally their attitude toward this willing handmaid of the active lawyer. From an extremely enthusiastic believer in the unquestionable ability of legal psychology to save the law from utter disgrace in the eyes of the public I have gradually simmered down to a state of mind which makes up in practicability and utility for what it has lost in warmth. In this article, then, I propose to work out with the reader's assistance a simple statement of what seems to be the proper relation, so far as testimony is concerned, of legal psychology to legal practices. To do this properly it will be necessary to trace swiftly the various steps which preceded this simple statement of our conclusion. Any science proceeds from the complex to the simple and the test of our work will be the degree of simplicity which we attain in stating our conclusion. Incidentally it will be possible to develop a few collateral ideas that will solidify our treatment.

At the very outset it will be well to establish clearly a point which is really the *raison d'être* of this article. That point is this: the value of a particular piece of testimony is not established or disproved by a mere determination of the veracity of the witness. If the witness is not veracious; i. e., if he willfully tells as the truth what he knows not to be the truth, his testimony is obviously of zero value. An academic writer, like myself, could scarcely expect to add anything to the highly developed common sense methods of determining a witness's veracity now and for ages in use. But equally important and at times more important because more difficult to ascertain is the determination of the ability of a given witness, proved honest and

¹The writer is greatly indebted to Professor W. B. Pillsbury, of the University of Michigan, for many valuable suggestions and other helps in the writing of this article and the earlier one, mentioned below.

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³"The Evaluation of Courtroom Testimony," this Journal, Vol. VII, No. 2, pp. 227ff.

anxious to tell the truth, to tell the objective truth, to translate an outward event into words for the auditor's use. The same set of facts will be given one interpretation by A and another by B; to this extent does the subjective overrule and condition the objective. In this article attention is confined to this latter problem.

There has been a gradual accumulation of literature on the psychology of testimony, some the work of pure scientists, some the work of novelists and journalists.⁴ The great work in this field is yet to be written, however. Writers upon this subject are or should be largely inductive in their methods of research. The difficulty has always been in collecting sufficient dependable data from which to draw accurate conclusions. In working up this subject I have proceeded in two ways: in part I have used a large number (about one hundred and fifty) of people as subjects for a simple test of the laws of testimony; in part I have used about twenty subjects in a series of more intensive tests. The evidence is, then, both extensive and intensive.

In the extensive work the attempt was made to reproduce as far as possible everyday conditions of receiving and setting forth observations. Simplicity was paramount. In keeping with, but in no sense in imitation of the work of earlier writers I took a situation about like this: by prearrangement with the lecturer I entered a university class in psychology in a very matter-of-fact way and presented to the lecturer a note. This he read and said: "I will be there at two o'clock." After replying "thank you" I left as unostentatiously as I had entered. A week later the professor in charge presented to these students a set of questions which I had prepared; the one hundred and fifty results were handed over to me for interpretation.

Here we have all the essentials of an evidential complex. Although prearranged and minutely detailed before consummation, my entry into this large lecture room appeared entirely casual. None of the students realized till later that they were being made use of as witnesses. The two or three who knew me were not allowed to influence the results. The lapse of a week allowed the incident to assume a still more insignificant place in their memories. Had the testimony been extracted the next day or a month later the results would have been vastly different. The great number of subjects used allowed the establishment of certain laws of testimony; the presence of both sexes

⁴In particular I have made use of William Stern's "Lectures on the Psychology of Testimony and on the Study of Individuality," *American Journal of Psychology*, Vol. 21, pp. 270-282.

contributed variety to the results. Every state of mind, from extreme concentration to playful or restless inattention, was represented in this class that morning. My careful guarding against doing anything or wearing anything that would unduly attract the attention rendered the results more significant for the purpose in hand.

There are two fairly distinct ways of reporting facts from memory; our present purpose is to discover the relative worth of these two methods. One way is to allow the witness to tell his own story from beginning to end without interruption—the narrative method (German, *Aussage*). The other is to draw out his knowledge by asking him pertinent questions. The former method is not commonly used in courts of law to-day. In going through the scores of narrative reports which these students were asked to make on the above simple incident, nothing stands out in clearer relief than the similarity, the mechanical character, of the workings of the human mind. In general the testimony thus obtained set forth the essential facts of the situation. There were errors, to be sure, important errors; on the other hand certain reports indicated a fine grasp of the situation. Some erred on the side of crudeness of statement; others on the side of *finesse* of statement. The typical report would have given any interested third party a picture of the situation that would have met his chief requirements. This general statement of the character of the results obtained by the use of the narrative method should establish or reestablish our faith in this form of testimony, and at the same time show us what degree of error can normally be expected under such circumstances.

All the papers set forth those facts which were too obvious to be neglected; but some went into detail to a surprisingly marked degree. Girls were more apt to do this than boys as well as to mince over the facts and add a touch from their imagination or related experiences. Thus the girls quite commonly said I was embarrassed, presuming to bespeak my condition as of that time, while the young men saw no occasion for a similar remark. Everywhere I was struck by the positive character of the statement's made. There were no "maybe's," no "probably's;" I wore a red coat and a brown hat when in fact the coat was black and the hat was a blue and white toque. Rare indeed was the candid reporter. The old desire to tell a good, a complete story, was here seen cropping out. The lowlands of their memories were filled up from the highlands of their imaginations. We all dislike to stop short of a rounded-out narrative; the

desire, the temptation, to be complete adds a fringe of untruth to nearly all of our everyday reports of facts. If our observations or recall be incomplete we dare not jump the intervening gap in our account; we bridge it, perhaps entirely unconsciously, with things that might have been. Indeed, it seems altogether probable that far too many witnesses are pressed to give forth evidence without being properly equipped with the facts to be able to do so; it seems that we err on the side of expecting too much rather than on the side of expecting too little from those we have on the witness stand.

† In conclusion, then, I should say that the percentage of error in these narrative reports was from twenty to twenty-five per cent. This closely agrees with Stern's figure for similar experiments. This result will be compared with that obtained from the interrogatory method of eliciting testimony and our conclusion as to their relative worth can then be drawn.

In the second or interrogatory method of eliciting testimony there are really two persons testifying, the one who asks and the one who answers. By this statement the idea should be conveyed that suggestion, as coming from the interrogator, may play as large a part in the witness's mind as the objective facts with which he came to the witness stand. As Stern says, suggestion is "the imitative assumption of a mental attitude under the illusion of assuming it spontaneously." This influence of suggestion is all the more to be guarded against because of its insidious character; it enters the witness's mind, does its damage, and departs without leaving a trace of its existence apart from the perverted testimony which it has adduced. Suggestion is the great fact to be reckoned with in any discussion of the interrogatory method of obtaining testimony. Hence the second division of this paper is devoted to a discussion of this matter.

With this in mind I framed certain of the questions asked on the same set of facts as outlined above so as purposely to influence the answers to them. I tried to introduce and to measure degrees of suggestiveness. Thus the question, Do you think he was very tall? How tall was he?, as asked, was more suggestive than the request to state his height would have been. But to ask whether the suit worn was black or brown when it was in fact gray, or to ask what color of flower was worn when in fact none was worn at all, was suggestion carried to a very far degree. Other questions were asked in a way as free from suggestion as possible. Let us run through some of these questions and answers hurriedly.

The first question was as to the time of my entrance into the room. The actual time was 11:45. 11% answered correctly; 8% did not venture an answer; 5% set a time later than 11:45; 76% underestimated the time. While recognizing the peculiar character of telling the time in a classroom, there is yet some reason for the unexpected error on the side of putting the time too early. Just such situations as this show how carefully all relevant circumstances must be borne in mind in evaluating evidence. Any bit of testimony comes out of an enveloping complex of circumstances.

The answers to the question, How long was he in the room?, were likewise difficult to interpret. The actual time was one minute. Answers varied from one, two and three seconds (invariably rendered by girls) to ten minutes. One is the more surprised at these answers because of the ease with which one could estimate the time it took the incomer to do all that he did. The bulk of the answers varied between one minute and three minutes and about thirty per cent were accurate. There was probably no element of suggestion in this question.

When asked the question, Do you think he was very tall? How tall was he?, the surprising answers four feet and six feet six inches were received. Girls were very likely to underestimate my height, suggesting to what extent people calculate height in terms of their own stature. But the young men were not inclined to overestimate my height, as the above statement might predispose one to expect. About twenty-two per cent had the correct height and the bulk of the answers varied but two inches from correctness. Presumably height is better remembered than are colors, as we shall see presently.

The more suggestive question, Did he wear an overcoat? If you think he did, describe the overcoat, trapped about thirty per cent of the class, who said no overcoat was worn. A small per cent did not know whether a coat was worn or not, while 67% tried to recall the color of the coat. Stern says that colors are very poorly remembered and such seems to have been the case in this instance. While 27% of the 67% described the coat correctly, the rest gave answers in nine different colors and styles. This showing gives clear indication that their replies were not based on any real knowledge of the facts of the case.

The very suggestive question, Was his suit black or brown?, took a large portion of the class unawares. A few said it was neither, admitted they had forgotten, or said they could not see it, but a large

percentage went on record as thinking it was black or as thinking it was brown. As a matter of fact the suit was neither color. The percentage of accuracy was very low at this point. The answers to this question show how manifestly the witness's mind is in the interrogator's hands for safe keeping.

The percentage of error in the answers to the question as to how many books were carried was large. It looks very much as if the witnesses based their answers on the probabilities of the case without actually knowing anything for a certainty. If a student were used to carrying one book he would put down one book; if two, two, etc. As a matter of fact three books were carried. In a broad sense witnesses are forever thus supplying facts, largely unconsciously, to round out their knowledge. The answers to this question were largely fortuitous.

Although no flower was worn eighteen per cent thought one was worn and three per cent described its color. This question was too suggestive and overshot its mark. But few were led astray by it. It shows, however, the important point that suggestion must not be overdone and that there is a natural limit to its functioning.

To the question, Did he appear embarrassed or nervous?, the answers were as likely to be yes as no. This result shows how difficult it is to separate the subjective from the objective. Undoubtedly every person who said I was embarrassed said so because he or she would have been in a similar situation. This is interesting psychology but very poor testimony. The young ladies' greater tendency to find embarrassment is perhaps to be explained in this way.

Only 24% had enough courage to overcome the suggestive question, Why didn't he look at the class? This is all the more astonishing in view of the fact that practically all of the reports put in the narrative form expressly stated that I did look into the faces of the class. Here in very simple form is seen one of the worst effects of the interrogatory method.

Practically every witness reproduced correctly the lecturer's remarks to me and one-half reproduced correctly my reply. However, these two remarks represented the high lights of this memory concept, the climax of this little drama, and all ears were alert to catch them. Curiosity prompted attention and as a result gave a very accurate memory concept. This experience alone shows how important it is to have some information as to the degree of attention shown when the observation is taken, when the impression is made on the witness's mind.

It will have been noted that the percentage of accuracy in these statements drawn out by the interrogatory method varies from three to ninety-five per cent with perhaps forty the average. When the narrative method was used the corresponding figure for accuracy (75-80%) was much larger. Theoretically, then, we can conclude without formal argument that the narrative method is much the better from the standpoint of accuracy. But the practitioner will say that there is no assurance that all the necessary facts will be produced when only the narrative method is used. This is a valid criticism. We have seen that the most important facts were brought out by this method but we saw also that much is left out that would have to be produced if the testimony is to be completely useful. From this accumulation of statements two propositions can be drawn. The first is that for a statement that would be generally accurate, that would be consistent and constructed with a sense of sequence and perspective, the narrative method is by far the better of the two. Perhaps at all times a witness should be allowed to tell his whole story without interruption before being cross-examined. At any rate there should be more credence placed in the narrative method and more use made of it in courtrooms. Our second proposition is that only on points which to the witness are not significant or are not sufficiently clear or which he purposely avoids, should a thoroughgoing use of the interrogatory method be made, and then only under the very considerable limitation that so far as possible "leading" or suggestive questions shall not be allowed. It is for the opposing counsel to detect such questions and to bring to the attention of the presiding judge the inadvisability of allowing them to be introduced. These two propositions are set forth merely as the offerings of experimental science; no one appreciates more than the writer the extent to which they would need to be altered to be made useful in practice.

I have purposely abbreviated the discussion of the intensive work done with the twenty students enrolled in a more advanced course in psychology. The work was done with technical care and the detailed findings are available. But after all the important results can be conveyed in brief fashion to the readers of this Journal. The problem attacked was this: to what extent can and must courts of law apply psychological tests to arrive at the accuracy of a witness's testimony. For our purposes tests of veracity are omitted, as in the beginning we purposely addressed ourselves only to the question of accuracy. Such technical tests of veracity as the well known association-reaction time

test, are in existence, but I seriously doubt whether there are any objective or mechanical tests ever so intricately devised that will give faithful results and that will dispense with the human equation, the juggling of wits between the subject and his interpreter. If this is the case these tests are no improvement upon the time-honored methods now in use of letting men read other men's minds unassisted by the apparatus of the scientist.

Our own problem, then, is to discover the extent to which accuracy inheres in the testimony of a veracious witness. Accuracy in turn depends on a number of mental traits. If one adds to ready observation a retentive memory he has two prime marks of a good witness; if his powers of association are fertile and his imagination not too rich he again has some of the attributes of a good witness. And so on with the other traits and their respective opposites. It was with such a notion in mind that I devised a lengthy series of tests through which each of these twenty students was put.

The purpose of the tests was to gain an index of each subject's mind. He was therefore looked at from many different angles, as it were. Thus, to test his readiness of reaction he was asked to cross off a designated letter in a page of printed type thrown together promiscuously. If he were accurate but slow in doing this he was of one type of mind; if speedy but inaccurate he was of another type. The work was done under pressure and the percentage of error was rendered in terms of the time used. To gain some idea of his readiness of association he was given a series of words and told to give in a designated interval their respective opposites, the wholes of which they were a part, or a word commonly associated with them. Thus black usually brought forth the response white; door, the response house; and bread the response butter. This is all very simple, and purposely so, but with the time element added a very definite notion of the witness's mental processes could be gained. Or again, if it were the imagination that needed attention, a series of chance ink-bLOTS was placed before him and he was asked to find all the various objects he could in them. The process was repeated for several other traits. It is surprising and encouraging to note what valuable information one can obtain through the use of such simple tests as these. No extensive laboratory equipment was needed; a little ingenuity and technical precision were all that were required.

In this way trait was added to trait for each individual and then so far as possible a coefficient of correlation was worked out for him. Either the Pearson or the Thorndike formula is available. Were such

mathematical accuracy in working up the results not necessary one could gain a fairly good idea of each witness's mental processes by merely looking over the unrelated results of each separate experiment. When this much has been done we have resulting a simple statement of A or B's mental processes that cannot fail to be of some value were either of these individuals to be used as a witness. The tests are reasonably simple and easy to apply. Of what practical value they are we shall see after turning aside for a minute to discuss another matter which is closely related to the topic under discussion; viz., individual differences and criminal responsibility.

This problem is a large human one; our mention of it here is only indicative of a larger demand for recognition of it. It is now a rather commonplace remark to say that it is the nature of the criminal and not the nature of the crime which is the proper unit of legal processes. A and B are both murderers and are sentenced to death after it has been shown that there are no ameliorating circumstances in either case. The law says that death by hanging is the penalty for murder in this degree. But who of us is so callous and so shallow as to say that A and B are so alike that exactly similar punishment must be meted out to both? How different may have been the past histories of these two men and how different the circumstances connected with their crimes. But yet the law knows only one kind of death and both are made to experience it. The law is eminently practical and abounds in exigencies. Having been shown that A and B are both murderers in the first degree it jumps a vast number of embarrassing individual differences and places both A and B on the gallows. To be sure there is a changing attitude toward the criminal showing itself of late years. The indeterminate sentence, the parole system, houses of correction and reform schools of the better type, and juvenile court all indicate that we feel that behind every crime there is a personality and that both punishment and improvement are to be reconciled with this personality.

The practicing lawyer will feel, at this point, that he is slipping off of firm ground just as soon as he departs from an objective treatment of the criminal based on the relatively simple classification of crimes. It is all too true that there are immensely greater difficulties in classifying human types than in classifying men's actions, in classifying criminals as criminals by occasion, by passion, by habit, etc., than in classifying them as robbers, counterfeiters, murderers, etc.

Ideally speaking, society has no right to point an accusing finger at any man without knowing all the facts of his life which bear upon

his wrongdoing. Indeed, something should be known of his ancestry. Biology has of late years afforded us some very interesting and useful information as to the way in which some perverted ancestry, several generations removed, reaches down and despoils a living being. Science has largely annulled Lombroso's criminal type, but yet a lay observer realizes that some individuals from birth are destined to be social misfits. Legal practice is slowly beginning to see the point in all this and probably is doing all that can be asked of it in simply recognizing this sort of evil fatalism which bears so heavily upon some members of society. In fact it seems after all that we should lose in hopeless bewilderment all that we should gain in humanization by throwing the attention entirely to the personality side of the crime. As practical men lawyers cannot be asked to be psychologists, pathologists, or sociologists. Occasionally when the crime is one of sufficient importance it may be necessary to call in the expert. Quite commonly doctors and penologists and others are called in in difficult cases. But in the great majority of cases it is asking enough if both judge and lawyer are at least converted to our "psychological point of view." In resuming this discussion we shall be answering the problem with which we began this section of this study as well as be finishing the entire essay.

We need to recognize that there are very positive differences in the structure and workings of human minds. Our brief account of the more intensive tests, just given, has prepared us for this statement. Memory, imagination, loquaciousness, gullibility, powers of association and observation, all show important differences in individuals of apparently the same mentality. To be sure we spurn the testimony of a person notoriously feeble of intellect. But we do not seem to appreciate fully enough how strangely human minds are blends; how there is an eternal law of compensation which is likely to make the memory weak if the apprehension is ready, or which makes good reasoning power go hand in hand with fluent powers of association. After all we shall have to admit that it would be well if we could look into each witness's mind and into his past, for it is only as we sympathize and appreciate him that we can pass judgment on him with a decent accuracy. The tests as described above are at hand and ready for use. With the aid of Whipple's or Starch's manual a long series can be worked up in little time. With the use of the correlation formula comparable trait can be combined with comparable trait, until with mathematical calculations a single set of numbers can be produced that will represent this man's mental pro-

cesses. Sufficient has already been said as to these tests to allow us to pass now to a brief presentation of our conclusions. They will be twofold.

• The first contribution to be spoken of is the answer to the question previously proposed: what is the assistance that psychology can render to law? or what is the proper relation of these two fields? I am much more convinced than ever that the significant contribution will be that of a point of view. If somehow the idea becomes real to the practicing lawyer that there is a science of the mind, that human minds are a complex of varying traits, that there are laws of the human mind but that these must be differently stated for every single individual, a great advance toward a better state of things will have been made. If he can be made to admit, and the more unconsciously the better, that he must come and reason with this science and reckon with these laws, a great battle will have been won. Happily, things point toward a realization of our desire in this respect.

• Our second and last point is concerned with how this change of attitude can be facilitated. An enthusiast could convert the most conservative of men by showing them a few of the most striking facts which psychology has to offer. The curve of forgetting, the localization of the senses in distinct areas of the cerebrum, various illusions, as of visual perception, would be very persuasive, especially if related to actual cases which have come to their attention. There is need for a popular account, replete with concrete cases, aiming to win over the practitioner to whom it is addressed to new ways of thinking. If he can be shown how very little, after all, can be brought into the range of attention and how faulty it is to allow this or that witness to talk authoritatively on a vast number of assumed observations, he will perhaps feel the embarrassment born of a guilty conscience and mend his ways. To facilitate matters all law schools should give some training in normal and abnormal psychology. To date there has been little or nothing of this kind done.

Let us be sane on this subject; let us be skeptical but yet not scornful toward this new science; let us take what it has to offer us in the way of a new point of view with open minds. Its contribution is a very real one and cannot be neglected in justice to itself and to the law.

PAROLE VIOLATORS

A STUDY OF ONE YEAR'S PAROLE VIOLATORS RETURNED TO AUBURN PRISON

FRANK L. HEACOX¹

During the year ending September 30, 1915, there were returned to Auburn Prison thirty (30) parole violators, one of whom has not been considered in this study because of the legal technicalities involved in his case.

This, of course, does not comprise the total number of those who violated their parole during the year, nor all of those who were declared delinquent, but only those who were returned to this institution. Some who are included in this study were paroled from the other prisons of the state and were returned here for the reason of proximity to the place where they were taken in custody.

The method of study that has been adopted has been first to give a history of the cases and to follow this with a summary of statistics, making such comment as seems indicated. An endeavor has been made to render the statistics, as nearly as possible, self-explanatory.

It may be insisted that the number studied is too small on which to base conclusions, but no apology is offered on this score, since the statistics are obtained by an intensive study of the individual, the method that is the basis of modern penology.

The comparisons that are made throughout under the title of "All Classes" refer to the results of a special study of two hundred consecutive admissions to this prison made during the fiscal year.

The case histories follow.

CASE HISTORIES

No. 1. W. S.—Age 34; first born of six children; began school at the age of seven, at first attending regularly, later only during the winter term; left at the age of eighteen, after reaching grammar school; has worked as a glass handler and driver, earning \$15 to \$16 a week; has been a widower for last two years; no children; began to drink immoderately after wife's death; has had no serious illnesses; present health good; left home at 23 because parents moved away; has no ambition beyond previous occupation; never previously convicted before being sent to prison for robbery first degree, which resulted from a fight in a saloon; was paroled to work as a driver; began frequenting saloons after working hours, in one of which he was accused of petit larceny, arrested, and sent to penitentiary, where he served twenty months; at the expiration of this time he was returned to prison.

¹Prison Physician, State Prison, Auburn, N. Y.

Binet-Simon age level, 11.1.

Intra-mural Classification: Competent, Alcoholic, Sub-normal.

Causative Factors of Criminal Career:

1. Mental Conflict—Over wife's death.
2. Environmental—Lack of home influences; bad companions.

Causative Factors of Violation of Parole:

1. Return to previous alcoholic habits.
2. Associating with bad companions.

No. 2. C. C.—Age 37; first born of eight children; began school at the age of ten; says he began so late because he had to sell papers to help support the family; leaving at fourteen after reaching the fifth grade; has worked as driver and huckster, earning from \$14 to \$25 a week; single; drank immoderately of both beer and whiskey; had gonorrhea at twenty and initial lesion of syphilis at 30; had rheumatism a year previous to admission; present health good; left home at 21 on account of irregularity of work; has no ambition beyond previous occupation; has been in penitentiary twice for intoxication and once for petit larceny; present conviction for receiving stolen property is the direct result of his defective control for alcohol; he was paroled to a job as a driver, reported and worked a month and when going to make a second report fell in with "old gang," began to drink and did not report or return to work; he was arrested for petit larceny, and while awaiting trial had an attack of delirium tremens; was convicted and served four months in the penitentiary before being returned to prison.

Binet-Simon age level, 10.3.

Intra-mural Classification: Deviate, Alcoholic, Segregable.

Causative Factors of Criminal Career:

1. Mental Peculiarity—Defective control for alcohol.
2. Home Conditions—Large family; lack of parental control.
3. Environmental—Early street life; bad companions.

Causative Factors of Violation of Parole:

1. Associating with bad companions.
2. Return to previous alcoholic habits.

No. 3. E. P.—Age 32; second born of four children; began school at six and left at twelve years, after reaching the seventh grade; began work as a breaker boy in the coal mines, but shifted frequently and later enlisted and served in the U. S. A. for three years; after this service worked as porter and drop forger; has earned \$2.50 a day; married at 24; has one child, and wife is working to support self and child; drinks beer and whiskey immoderately; never had any serious illnesses; present health good; left home at 24 when he was married; highest ambition is to be a merchant; had been previously convicted of robbery third degree, but received a suspended sentence; present conviction is for grand larceny second degree; he was paroled to his former job as drop forger, but began to drink, changed his job without permission and had an argument with the man he was paroled to, who warned him of his habits; he made no

more reports and drank immoderately, as a result of which he was returned to prison.

Binet-Simon age level, 12+.

Intra-mural Classification: Deviate, Alcoholic, Segregable.

Causative Factors of Criminal Career:

1. Mental Peculiarity—Defective judgment.

2. Environmental—Bad companions.

Causative Factors of Violation of Parole:

1. Return to previous alcoholic habits.

2. Mental Peculiarity—Defective judgment, in changing job without permission.

No. 4. R. B.—Age 26; third born of three children; father died of paralysis at 50, and mother of pneumonia at 26; began school at five and left at fourteen years when in the first year of high school; has worked as farm hand, bell-hop, pin boy in bowling alley, shirt ironer and as hostler, earning from \$9.00 a week to \$15.00 a month and his board; denies the use of alcoholic drinks; had typhoid fever at nine years of age; present health good; ran away from home at fourteen, and when returned three weeks later he was sent to the State Industrial School; has no ambition along vocational lines; has been convicted of petit larceny, burglary third degree, and has been in a penitentiary, two reformatories from which he twice violated parole; on present conviction for burglary second degree and grand larceny he was again sent to reformatory and after a few months transferred to prison; after one year he was paroled to a job as farm hand; he remained three days, and becoming discouraged, as he says, because his employer would not let him associate with his daughters, he left the job and went to Buffalo; he later came back to prison voluntarily, as he said he "knew they would be looking for him."

Binet-Simon age level, 11.4.

Intra-mural Classification: Deviate, Recidivist, Segregable.

Causative Factors of Criminal Career:

1. Home Conditions—Early death of mother; father probably alcoholic and a "ne'er do well."

2. Mental Peculiarity—Desire to roam.

3. Environmental—Early institutional life.

Causative Factors of Violation of Parole:

1. Mental Peculiarity—Desire to roam.

2. Mental Conflict—Over lack of confidence on part of employer (?).

No. 5. P. B.—Age 30; third born of five children; father died of heart trouble at 54, and mother of paralysis at 48; began school at nine and left at thirteen, after reaching the third grade; has worked only as a laborer and highest wages received has been \$2.00 a day; lost most of his jobs as a result of alcoholism; drinks both beer and whiskey and admits to frequent intoxications; had an attack of rheumatism six years ago, which lasted three months, and met with an accident when sixteen years of age, losing two fingers of right hand; now

has valvular heart disease with poor compensation; left home at sixteen to shift for himself, he says, because he was tired of living with his aunt to whom he went after his parents died; his highest ambition is to be a blacksmith; he had been previously arrested for intoxication in Iowa and Michigan; his present conviction is for assault second degree, which resulted from his stabbing a man who had stolen \$5.00 from him while he was asleep (drunk); he was paroled to a job as porter, but started in to drink immediately on reaching New York City, and had "beaten his way" towards Chicago as far as Buffalo when he was arrested and returned to prison.

Binet-Simon age level, 12.

Intra-mural Classification: Deviate, Alcoholic, Segregable.

Causative Factors of Criminal Career:

1. Mental Peculiarity—Defective control for alcohol.
2. Heredity—Father alcoholic.
3. Home Conditions—Early death of parents.
4. Adolescent Instability.

Causative Factors of Violation of Parole:

1. Return to previous alcoholic habits.
2. Adolescent Instability.

No. 6. J. Y.—Age 53; first born of five children; mother died of pulmonary tuberculosis at 35; began school at five, reached the third grade and left at ten; has always worked on a farm; highest wages received, \$18 a month and board; married at 24, wife was an epileptic and later became insane and was committed to an asylum; had one child, now 29 years old; drinks beer immoderately, becoming intoxicated as often as two or three times a week; is subject to chronic rheumatism; present health good; left home at sixteen to better himself, as father had considerable difficulty supporting the family; his highest ambition is to be a machinist; he had previously been arrested on a charge of attempted assault, but was discharged; his present conviction is for manslaughter second degree, which he says resulted from shooting one of several men who started "to rough house" in his home and returned to "clean up" after he had ordered them away; was paroled after serving seven years and six months of a fifteen-year sentence, to work for his sister on a farm; was out about eight months when he had an argument with brother-in-law, who requested and obtained his return to prison.

Binet-Simon age level, 10.

Intra-mural Classification: Deviate, Alcoholic, Sub-normal (pre-senile).

Causative Factors of Criminal Career:

1. Accidental Circumstances—Home invaded by "roughs."
2. Mentality—Beginning senile.
3. Unfavorable Marital Life—Wife epileptic and perhaps immoral.

Causative Factors of Violation of Parole:

1. Mentality—Senile; stubbornness leading to quarrel with brother-in-law.

No. 7. L. C.—Age 25; only child; mother died in giving him birth, and father died at 54 of pulmonary tuberculosis; began public school at seven, passed nearly through high school and had a course in a business school, finishing at seventeen; has worked as bookkeeper and stenographer, and served two and one-half years in the Navy as yeoman, being discharged because of shortage in his funds; his highest wages were \$75 a month; single; denies the use of alcohol, but smokes cigarettes excessively; had gonorrhea and a chancre at nineteen, and was operated upon for appendicitis while in the Navy; present health fair, has chronic otitis media; left home at seventeen with another boy as the result of wanderlust; his highest ambition is to become a musical composer; he had previously been convicted in another state though the charge is not known, the present conviction is for burglary third degree and petit larceny is the result of his taking some money from the sale in office where he was employed; he was paroled to a job on a farm, and was out about six months when he was returned as the result of sexual excesses, one young girl claiming to be pregnant by him.

Binet-Simon age level, 12+.

Intra-mural Classification: Competent, Responsible, Adult.

Causative Factors of Criminal Career:

1. Adolescent Instability.
2. Home Conditions—Early death of mother; father tubercular; lack of parental control.
3. Natal (?)—Mother died in giving him birth.

Causative Factors of Violation of Parole:

1. Mental Peculiarity—Defective control of sex impulses.
2. Adolescent Instability.
3. Employment Ill-fitted—Farm work uncongenial.

No. 8. W. G.—Age 31; fifth born of six children; father in Soldiers' Home; maternal grandfather died of pulmonary tuberculosis at 101 (?); one maternal uncle a common drunkard; began school at eight and left at fourteen years, reaching seventh grade; attended a business college a short time studying bookkeeping; has worked as shipping clerk and as an actor, earning from \$9.00 to \$15.00 a week; single; drinks whiskey immoderately, often intoxicated; smokes cigarettes excessively; had typhoid fever at seven, and measles at nine; present health poor, has large hydrocele and is very poorly nourished; left home at fifteen, because home broken up by death of mother; his highest ambition is to be an actor; had previously been convicted of grand larceny second degree, for which he served one sentence in reformatory and another in prison, he was paroled to the Salvation Army, but failed to report and returned to his former alcoholic habits; he was out nearly three years before he was finally found and returned to prison.

Binet-Simon age level, 11.2.

Intra-mural Classification: Deviate, Alcoholic, Sub-normal.

Causative Factors of Criminal Career:

1. Mental Peculiarity—Defective control for alcohol.
2. Home Conditions—Early death of mother; father alcoholic.
3. Environmental—Bad companions.

Causative Factors of Violation of Parole:

1. Return to previous alcoholic habits.
2. Physical Condition—Large hydrocele.

No. 9. S. P.—Age 31; second born of three children; began school at the age of seven and left at twelve, after reaching the sixth grade; has worked as laborer and farm hand, earning as high as \$14 a week; single; drinks beer and whiskey and is subject to periodical sprees; he had gonorrhea at 20, and right foot broken at 29; present health good; except intoxicated when returned to prison; left home at seven, being farmed out by parents; he has no ambition beyond manual labor; he had previously been convicted and sent to reformatory for burglary third degree, and was paroled after fourteen months; present conviction is for assault, which he says resulted from shooting a man while they were fighting; he was paroled to a job as porter in a small hotel and began to drink almost as soon as he was out; after six months, following a debauch, he was returned to prison.

Binet-Simon age level, 12.

Intra-mural Classification: Deviate, Recidivist, Sub-normal.

Causative Factors of Criminal Career:

1. Mental Peculiarity—Defective control for alcohol.
2. Environmental—Lack of home influences; farmed out by parents at early age; bad companions.

Causative Factors of Violation of Parole:

1. Employment Ill-fitted—Paroled to work as porter in a low-grade hotel.
2. Return to previous alcoholic habits.

No. 10. E. P.—Age 35; third born of seven children; began school at five, attended irregularly on account of truancy, left at sixteen, after reaching seventh grade; he has worked as painter, machine hand, and shoemaker; he has earned as high as \$3.80 a day; his occupational history shows frequent changes; married at 19, had one child, and after three years he left wife because of her immorality; his wife's father is taking care of child; he drinks beer and admits to frequent intoxications; admits using morphine once, but probably has used it continually; had measles and scarlet fever between seven and eight years of age, diphtheria at eleven, and gonorrhea at sixteen and thirty-three; his highest ambition is to be a doctor; he left home at nineteen when he was married; present health good; he had previously been convicted of petit larceny; his present conviction is for burglary third degree; he was paroled to a job on a farm, but did not report for work and was later sent to a penitentiary for criminally having narcotics in his possession; after serving ten months he was returned to prison.

Binet-Simon age level, 12+.

Intra-mural Classification: Drug Addict, Segregable.

Causative Factors of Criminal Career:

1. Adolescent Instability.
2. Unfavorable Marital Life—Wife immoral.
3. Mental Peculiarity—Drug addict.

Causative Factors of Violation of Parole:

1. Laziness—No desire to work.
2. Return to previous drug habits.

No. 11. A. S.—Age 31; fifth born of five children; began school at five, and left at seventeen, he says he did not go beyond the fourth grade; he has always worked as a clothing cutter, earning from \$9.00 to \$27.00 a week; he was married at fifteen and had two children; his married life was uncongenial as the marriage had been arranged by his parents and he says the ceremony was performed while he was intoxicated; he denies the use of liquors, but smokes pipe and cigarettes; had measles at three years of age; his present health is only fair because of chronic dyspepsia; he left home at fifteen when he was married; his highest ambition is to be a lawyer; he had previously been convicted of forgery and was pardoned after serving three months in a reformatory; his present conviction is for abandonment of children, which he says was the result of his attempt to get away from his wife's persecutions; he was paroled to a job as a clothing cutter, but remained on the job only a short time when he went to Cincinnati, he says, because of his wife's continued persecutions.

Binet-Simon age level, 12.

Intra-mural Classification: Deviate, Recidivist, Sub-normal.

Causative Factors of Criminal Career:

1. Unfavorable Marital Life—Early marriage to a much older woman.
2. Home Conditions—Persecutions of wife who interfered with each new employment.
3. Mental Peculiarity—Defective judgment.

Causative Factors of Violation of Parole:

1. Persecution by wife.
2. Mental Peculiarity—Defective judgment.

No. 12. A. G.—Age 41; fourth born of eight children; father died at 69 of heart trouble, and mother at 67 of pulmonary tuberculosis; never attended school until in prison; he said that he was kept out so long that he was ashamed to go when he got older; has learned to read and write in prison; has worked as carpenter and farm hand, earning as high as \$3.50 a day; married at 24, had two children, and after nine years wife left him and got a divorce; the children are with his wife who is married again; drinks both beer and whiskey, as he says "all he can get"; had measles at thirteen, and scarlet fever at fourteen, and initial lesion of syphilis at thirty-five; had left leg broken twice, at nineteen and twenty-six years of age; present health good; left home at twenty-two as a result of adolescent instability; he has no ambition beyond that of his present one of carpenter and

cabinet maker; he has previously been arrested many times for petit larceny, in addition to several other offenses; his present conviction was for receiving stolen property, which resulted from the theft of clothing which had been thrown off a train in front of his house by other members of his gang; he was paroled to work as a carpenter, but did not report for work, and began his alcoholic habits immediately; he was out about nine months before he was returned to prison.

Binet-Simon age level, 10.1.

Intra-mural Classification: Deviate, Recidivist, Segregable.

Causative Factors of Criminal Career:

1. Home Conditions—Early death of mother; father immoral; lack of parental control.
2. Environmental—Bad companions.
3. Mental Peculiarity—Defective control for alcohol.

Causative Factors of Violation of Parole:

1. Return to previous alcoholic habits.

No. 13. C. E.—Age 27; eighth born of nine children; father died at 72 of Bright's disease, and was previously an immoderate drinker; began school at seven and left at fifteen, after reaching second year in high school; had been suspended twice for truancy; he has worked as elevator boy, messenger boy, telegraph operator, and salesman, earning as high as \$25.00 a week; he was married at 20, had one child which died when six months old; after living together 1½ years, his wife's mother obtained an annulment on the ground that the wife was not of age at the time of marriage; he admits to the use of beer, and to occasional intoxications; he had measles at six, and gonorrhea at twenty-five; his present health is good; he left home at age twenty when he was married; his highest ambition is to be a banker; he has previously been in an industrial school for incorrigibility, and in a reformatory for petit larceny, from which latter institution he violated a parole; his present conviction is for burglary third degree, which was the result of his breaking into a railroad station with a partner and taking some money and mileage books; he was paroled to work as a salesman for his brothers; he worked a short time and then went to New York City with a young girl; he was returned after being out about six months.

Binet-Simon age level, 15.

Intra-mural Classification: Deviate, Recidivist, Segregable.

Causative Factors of Criminal Career:

1. Adolescent Instability.
2. Home Conditions—Father alcoholic.

Causative Factors of Violation of Parole:

1. Mental Peculiarity—Defective control of sexual impulse.

No. 14. J. K.—Age 47; fourth born of six children; father died at seventy of heart trouble, and his mother at sixty of paralysis; he began school at seven and left at fifteen, reaching only fourth grade on account of many trancies; he has worked as driver and laborer, earning \$2.25 a day as the highest; single; he is a chronic alcoholic

and subject to sprees; he had measles at six, and gonorrhea at twenty-two; present health only fair, as a result of chronic alcoholism; he lived at home until he was thirty-six, when his father sold his livery business, and the subject had to shift for himself; his highest ambition is to be a farmer; he has been previously convicted twice, for intoxication and for petit larceny; his present conviction is for burglary third degree, which he says resulted from stealing some chickens while intoxicated; he was paroled to work as a laborer, but finding the work too hard he went into the country to work on farms without obtaining permission from the parole officer; following a spree he was sent to the penitentiary for intoxication, and after serving thirty days was returned to prison.

Binet-Simon age level, 12.

Intra-mural Classification: Deviate, Alcoholic, Sub-normal.

Causative Factors of Criminal Career:

1. Mental Peculiarity—Defective control for alcohol.

Causative Factors of Violation of Parole:

1. Return to previous alcoholic habits.
2. Physical Condition—Arterio-sclerosis; work too hard.

No. 15. J. W.—Age 36; second born of two children; his father, mother and brother all died before he was one year old, and he was adopted and brought up by strangers; began school at nine and left at seventeen, reaching first year high school; he has worked only as a hostler in racing stables; single; he drinks whiskey and admits to frequent intoxications; he had scarlet fever at eight, measles at nine, tubercular adenitis at fourteen; his present health is good, except for alcoholic gastritis; he left home at eighteen on account of his work taking him away on the racing circuit; his highest ambition is to be a veterinary surgeon; he has previously been convicted of cruelty to animals, for which he served twenty days in jail; his present conviction is for forgery second degree, which he says he did in order to get money for drink; he was paroled to work on a farm, and after working regularly for five months began to drink, became intoxicated and forged a small check on his employer, following which he was returned to prison.

Binet-Simon age level, 12.

Intra-mural Classification: Deviate, Alcoholic, Sub-normal.

Causative Factors of Criminal Career:

1. Home Conditions—Early death of parents.
2. Environmental—Bad companions.
3. Mental Peculiarity—Defective control for alcohol.

Causative Factors of Violation of Parole:

1. Return to previous alcoholic habits.

No. 16. J. R.—Age 60; third born of three children; began school at six, attended irregularly on account of trancies, left at sixteen, reaching only fourth grade; has worked as hostler, painter, sailor, brakeman, and watchman, highest wages received \$2.60 a day; married at thirty-two, had four children, all dying in infancy; left

wife after ten years, as a result of a misunderstanding, wife has since died; drinks beer and whiskey and admits to occasional intoxications; had pneumonia at fourteen, and chancre at twenty-nine; present health good; left home at twenty-seven, as a result of wanderlust; has no ambition above his previous occupation; he admits to a previous arrest for intoxication, but it is suspected that he has had other convictions; present conviction is for burglary third degree, which he says is the result of his having some mechanic's tools, which were given to him by another man to hold for him; he was paroled to New York City without having a definite job, and left the city apparently without making any effort to obtain one; he was out about one month before he was returned to prison.

Binet-Simon age level, 10.4.

Intra-mural Classification: Deviate, Psychosis (suspected), Segregable.

Causative Factors of Criminal Career:

1. Mentality—Psychosis (?).

Causative Factors of Violation of Parole:

1. Mentality—Psychosis (?).

No. 17. W. H.—Age 33; tenth born of eighteen children; he denies any knowledge of his parents and says that he was brought up by his sister; he began school at six and left at twelve after reaching the fifth grade; he gives as his occupation, errand boy and odd jobs, and says that he never stayed long in one place; he was married at 28, has one child, whom wife supports by working; he drinks beer and whiskey and admits to frequent intoxications; he has had no serious illnesses; his present health is good; he left home at seventeen as a result of wanderlust, though at this time he had just finished six months in an industrial school; his highest ambition is to be a lawyer; he denies previous convictions, though he was sent to the industrial school because of truancy; his present conviction is for burglary third degree, and resulted from his being caught with a quantity of shoes and watches that had been stolen; he had previously been paroled and did not report at the job, and returned to prison; eight months later he was again paroled to work as a laborer, and again did not report on the job, and was out only four days before he was re-arrested as a result of his being in company with other criminals and was returned to prison.

Binet-Simon age level, 12+.

Intra-mural Classification: Deviate, Recidivist, Sub-normal.

Causative Factors of Criminal Career:

1. Home Conditions—Early death of parents.
2. Adolescent Instability.
3. Mental Peculiarity—Defective control for alcohol.

Causative Factors of Violation of Parole:

1. Return to previous alcoholic habits.
2. Associating with criminal friends.

No. 18. L. G.—Age 43; his order of birth is maternal first and paternal fourth; father died at sixty-five of heart disease; he began school at five and says he left at nineteen, after reaching fifth grade; he has worked as molder and machinist; highest wages received \$2.25 a day; he drinks both beer and whiskey and is subject to periodical sprees; he was married at forty-two, but separated after two months of married life after learning that wife was immoral; he had measles at eight, gonorrhea at thirty-three, and chancroids at thirty-three; his present health is only fair, on account of moderate arterio-sclerosis; he left home at twenty on account of his work; his highest ambition is to be a millwright; he had previously been convicted six times for intoxication, and twice for vagrancy; his present conviction is for burglary third degree, and resulted from his breaking into a garage and stealing some automobile tires while intoxicated; he was paroled to work as a laborer, and after working a few months returned to alcoholic habits and left his job; he was out about eight months before he was returned to prison.

Binet-Simon age level, 10.4.

Intra-mural Classification: Deviate, Alcoholic, Sub-normal.

Causative Factors of Criminal Career:

1. Mental Peculiarity—Defective control for alcohol.

Causative Factors of Violation of Parole:

1. Return to previous alcoholic habits.

No. 19. F. U.—Age 25; first born of three children; he began school at eight and left at seventeen, reaching only fourth grade; he has worked as laborer only; he drinks beer moderately; he has had no serious illnesses; single; his present health is good, except that he has both patellæ fractured and ununited as a result of a fall several years ago; he left home at fourteen as a result of wanderlust; his highest ambition is to be a farmer; he has previously been convicted twice of grand larceny, for which he was sent to the industrial school, later transferred to Elmira; his present conviction is for burglary third degree, for which he was sent to the reformatory, and after four months transferred to prison; he was paroled to work on a farm, but stayed there less than a month when he left, as he says, because of ill-treatment by his employer, and was arrested for breaking into several nearby cottages; he was sent to jail for thirty days and then returned to prison.

Binet-Simon age level, 11.1.

Intra-mural Classification: Deviate, Recidivist, Segregable.

Causative Factors of Criminal Career:

1. Home Conditions—Father alcoholic; lack of parental control.
2. Adolescent Instability—With desire to roam.
3. Environmental—Bad companions.

Causative Factors of Violation of Parole:

1. Conditions of Employment—Ill-treatment by employer (?).

No. 20. J. O.—Age 24; first born of eight children; he began school at nine and left at twelve, reaching the fourth grade; he has worked as a cooper and fireman; single; he drinks beer moderately and denies intoxications; had gonorrhea at seventeen; his present health is only fair as a result of cardiac hypertrophy; he has always lived at home; he has no ambition above his present occupation; he has previously been arrested for stealing coal and shooting craps; his present conviction is for burglary third degree, which resulted from his breaking into a store; he says that he was not given a fair trial because he did not steal anything; he was paroled to work as a laborer, but worked only a short time when he left without permission, as he says, to go to see his mother who was very sick; he was arrested and convicted of petit larceny and served ten months in the penitentiary before being returned to prison.

Binet-Simon age level, 10.4.

Intra-mural Classification: Deviate, Recidivist, Segregable.

Causative Factors of Criminal Career:

1. Home Conditions—Father alcoholic; large family; much poverty; lack of healthy mental and recreational interests.
2. Mentality—Moron.
3. Environmental—Bad companions.
4. Adolescent Instability.

Causative Factors of Violation of Parole:

1. Adolescent Instability—Left job without permission.
2. Mentality—Moron.
3. Physical Condition—Valvular heart disease.

No. 21. E. R.—Age 32; third born of seven children; father a moderate drinker; he began school at eight and left at fifteen, after reaching the fifth grade; he has always worked as a farmer; single; he drinks both beer and whiskey and is subject to periodical sprees; he has had no serious illnesses, but at seventeen had a severe injury to his head, since which time he has shown a defect of memory; never left home, but worked on his father's farm; his highest ambition is to be a farmer; he was previously convicted of intoxication; his present conviction is for grand larceny second degree, and resulted from his stealing and selling a cow; he was paroled to work on a farm, but changed his work without permission, and was returned as a result of his becoming familiar with a neighbor's wife, whose husband complained of him to the parole officer; he was out about fourteen months before he was returned to prison.

Binet-Simon age level, 10.

Intra-mural Classification: Deficient, Moron (perhaps dull from physical causes), Segregable.

Causative Factors of Criminal Career:

1. Mental Peculiarity—Defective control for alcohol.
2. Mentality—Moron or dull from previous head injury.

Causative Factors of Violation of Parole:

1. Associating with bad companions.
2. Return to previous alcoholic habits.

No. 22. F. N.—Age 28; second born of two children; one maternal uncle alcoholic, one paternal uncle epileptic; he began school at five and attended winters only, and left at twenty, reaching only third grade; he has worked as farmer and laborer only; single; he drinks both beer and whiskey and admits to frequent intoxications; he had diphtheria at eight, typhoid fever at twenty-one, and chancroids at twenty-two; his present health is good, except for occasional epileptic attacks; he has always lived at home; his highest ambition is to be a farmer; he has previously been convicted of intoxication five times, and has served a sentence in the penitentiary for assault; his present conviction is for an attempt at suicide, which he says resulted from his attempt to drink muriatic acid which he found in the jail where he was being held under other charges; he was paroled to work as a laborer, but worked only three weeks when he was returned as a result of his making threats to his employer.

Binet-Simon age level, 9.2.

Intra-mural Classification: Deviate, Epileptic, Segregable.

Causative Factors of Criminal Career:

1. Mentality—Moron and epileptic.
2. Mental Peculiarity—Defective control for alcohol.

Causative Factors of Violation of Parole:

1. Return to previous alcoholic habits.
2. Mentality—Moron.

No. 23. F. M.—Age 40; third born of six children; father died at seventy-four of heart disease; mother died at fifty-six of pulmonary tuberculosis; one sister died of pulmonary tuberculosis; one paternal uncle died at fifty-four of pulmonary tuberculosis; he began school at six and left at fifteen, after reaching fourth grade; he has worked as laborer, driver, and sailor, highest wages received \$30.00 a month and board; single; drinks both beer and whiskey and admits to frequent intoxications; he had measles at five, and gonorrhea at twenty-two; his present health is only fair, as a result of cardiac hypertrophy; he left home at twenty-seven as a result of wanderlust; his highest ambition is to be a carpenter; he denies previous convictions; his present conviction is for burglary third degree, which resulted from his breaking into a hardware store; he was paroled to work as a laborer, but returned to alcoholic habits, and after serving thirty days in the penitentiary for intoxication was returned to prison, after being out about two months.

Binet-Simon age level, 12+.

Intra-mural Classification: Deviate, Alcoholic, Sub-normal.

Causative Factors of Criminal Career:

1. Mental Peculiarity—Social suggestibility.
2. Adolescent Instability.
3. Mental Peculiarity—Defective control for alcohol.

Causative Factors of Violation of Parole:

1. Return to previous alcoholic habits.

No. 24. C. R.—Age 44; first born of eight children; began school at seven and left at sixteen, after reaching fifth grade; he has always

worked as a mason, earning as high as \$4.80 a day; he was married at twenty-one, has had five children, one of whom was in a house of prostitution; he drinks both beer and whiskey and admits to frequent intoxications; he had measles at fifteen; his present health is only fair, as a result of chronic alcoholism; he left home at twenty on account of work; his highest ambition is to be a merchant; he has previously been convicted of fighting, and twice for petit larceny, and several times for intoxication; his present conviction is for burglary third degree, and resulted from his breaking into a saloon to obtain alcoholic liquors; he was paroled to work as a mason; he was out only a short time when he was returned on account of alcoholism, which he says was the result of persecutions by his wife, who also is alcoholic.

Binet-Simon age level, 11.

Intra-mural Classification: Deviate, Alcoholic, Segregable.

Causative Factors of Criminal Career:

1. Mental Peculiarity—Defective control for alcohol.
2. Home Conditions—Wife alcoholic and immoral; children not properly brought up.
3. Mental Conflict—Over home conditions.

Causative Factors of Violation of Parole:

1. Return to previous alcoholic habits.
2. Home Conditions—Very unfavorable; persecutions by wife.

No. 25. S. B.—Age 34; first born of two children; he never attended school, but can read and write a little in Austrian; he has worked as a laborer and sailor; single; he drinks both beer and whiskey, as he says "all he can get"; he has had no serious illnesses, but on admission his health was found to be poor on account of pulmonary tuberculosis; he left home at twenty-two to come to the United States; his highest ambition is to be a mechanic; he has previously been convicted of petit larceny, and grand larceny second degree; his present conviction is for grand larceny second degree, and resulted from his stealing a watch from a prostitute in a disorderly house; he was paroled to New York City without a definite job, and without obtaining permission took a job on a ship going to South America; he was out one year before being returned to prison.

Binet-Simon age level, 9.1.

Intra-mural Classification: Deficient, Moron, Segregable.

Causative Factors of Criminal Career:

1. Mentality—Moron.
2. Environmental—No home life after coming to United States; bad companions.
3. Mental Peculiarity—Defective control for alcohol.

Causative Factors of Violation of Parole:

1. Lack of Definite Employment—took a job as sailor without permission.
2. Return to previous alcoholic habits.

No. 26. J. S.—Age 24; second born of ten children; his father died at fifty-two of pulmonary tuberculosis; he began school at six

and left at fourteen, after reaching the seventh grade; he has always worked as waiter and bartender; single; he drinks beer immoderately, but denies intoxications; he has had no serious illnesses; his present health is good, he left home at eighteen on account of his work; his highest ambition is to be a chauffeur; he has had no previous convictions, his present conviction is for assault first degree, which resulted from his shooting his landlady during an argument; he was paroled to work as a laborer, worked about two months when he left the job without permission; he was out about four years before he was returned to prison.

Binet-Simon age level, 10.3.

Intra-mural Classification: Deficient, Moron, Segregable.

Causative Factors of Criminal Career:

1. Mental Peculiarity—Defective self-control (racial).
2. Environmental—Lack of home influences; bad companions; worked around saloons.
3. Mentality—Moron.
4. Adolescent Instability.

Causative Factors of Violation of Parole:

1. Associating with bad companions.
2. Mentality—Moron.

No. 27.—Age 28; second born of six children; father died at thirty-two as a result of an accident; he began school at seven and left at thirteen, after reaching the eighth grade; he has worked as a laborer, presshand, and carpenter, highest wages received, \$12.00 a week; single; he drinks beer and admits to occasional intoxications; he has had no serious illnesses; his present health is fair, as a result of chronic otitis media; he left home at fourteen, when he was sent to a reform school; his highest ambition is to be a railroad fireman; he has previously been convicted twice for petit larceny; his present conviction is for robbery first degree, which resulted from his holding up a man on the street; he was paroled to work in a shop as a wood-worker; was out only a month when he was arrested and convicted of disorderly conduct, and after serving ten days in the penitentiary was returned to prison.

Binet-Simon age level, 11.1.

Intra-mural Classification: Deviate, Recidivist, Sub-normal.

Causative Factors of Criminal Career:

1. Home Conditions—Lack of parental control; lack of healthy mental interests.
2. Environmental—Living conditions of foreign colony in large city; much street life; bad companions.

Causative Factors of Violation of Parole:

1. Associating with bad companions.

No. 28. H. L.—Age 21; fifth born of ten children; he began school at seven and left at thirteen, after reaching eighth grade; he was expelled once for misconduct in school; he has worked as messenger, teamster, laborer, and farmer, earning as high as \$14.00 a week; single; he denies the use of alcoholic liquors; he had measles

at eight, whooping cough and mumps at nine; his present health is good; he left home at fifteen, when sent to industrial school; his highest ambition is to be a farmer; he has previously been in the industrial school for delinquency, and in the penitentiary for disorderly conduct; his present conviction is for burglary third degree, which he says resulted from his breaking into a railroad car while intoxicated; he was paroled to work as a laborer and teamster, he was not allowed to take this position and obtained one on a farm; he left this job, and, returning about two years later to visit his mother, he became involved in a fight with a neighbor, and following his arrest and discharge he was returned to prison.

Binet-Simon age level, 12+.

Intra-mural Classification: Competent, Responsible, Adult.

Causative Factors of Criminal Career:

1. Environmental—Bad companions.
2. Adolescent Instability.
3. Mental Conflict—Over unsatisfied desire to live in the country.

Causative Factors of Violation of Parole:

1. Adolescent Instability.
2. Accidental fight with a neighbor while visiting mother.

No. 29. J. S.—Age 55; order of birth not known; school history not known; he has always worked as a railroad engineer; single; admits to the immoderate use of alcohol; has had no serious illness; present health poor, on account of valvular heart disease with considerable edema; he denies previous convictions; his present conviction is for grand larceny second degree; he had previously obtained a parole which he violated; he was paroled to a job as laborer, but did not report for work, and after being out about a year was removed from a hospital in Philadelphia to be returned to prison.

Binet-Simon age level, not obtained.

Intra-mural Classification: Competent, Alcoholic, Adult.

Causative Factors of Criminal Career:

1. Mental Peculiarity—Defective control for alcohol.

Causative Factors of Violation of Parole:

1. Return to previous alcoholic habits.
2. Physical Condition—Valvular heart disease.

A consideration of the Causative Factors of the Criminal Career and those of the Violation of Parole is highly interesting, as well as the most important part of each study. Without their determination the individual remains a puzzling problem, while upon them rests the basis of individual treatment.

An enumeration and summary of these factors for the whole group are given; such summarization, while not particularly useful in the individual problems, offers a means of comparison with groups studied by other investigators, and might aid in a better understanding and organization of parole work.

We will first consider the Causative Factors of Criminal Career.

TABLE I.
CAUSATIVE FACTORS OF CRIMINAL CAREER.
ENUMERATION OF MAJOR AND MINOR FACTORS.

		No. times occurring as :	
		Major	Minor
<i>Home Conditions:</i>	Total	Factor	Factor
Lack of parental control.....	5	1	4
Father alcoholic	5	2	3
Early death of mother.....	4	2	2
Early death of parents.....	3	2	1
Lack of healthy mental interests.....	2	1	1
Large family	2	0	2
Father much ill	1	0	1
Persecutions of wife	1	0	1
Father immoral	1	0	1
Much poverty	1	0	1
	—	—	—
	25	8	17
		No. times occurring as :	
		Major	Minor
<i>Mental Peculiarity:</i>	Total	Factor	Factor
Defective control for alcohol.....	15	9	6
Defective judgment	2	1	1
Defective self-control	1	1	0
Social suggestibility	1	1	0
Desire to roam.....	1	0	1
Drug addiction	1	0	1
	—	—	—
	21	12	9
<i>Environmental:</i>			
Bad companions	13	1	12
Lack of home influences.....	4	0	4
Early street life	2	0	2
Early institutional life	1	0	1
Living conditions of foreign colony.....	1	0	1
	—	—	—
	21	1	20
<i>Adolescent Instability</i>	10	3	7
<i>Mentality:</i>			
Moron	5	2	3
Psychosis	1	1	0
Senile	1	0	1
	—	—	—
	7	3	4

	Total	No. times occurring as:	
		Major Factor	Minor Factor
<i>Unfavorable Marital Life:</i>			
Wife epileptic	1	0	1
Wife immoral	1	0	1
Wife much older.....	1	1	0
Wife alcoholic and immoral.....	1	0	1
	4	1	3
<i>Mental Conflict:</i>			
Over wife's death.....	1	1	0
Over home conditions.....	1	0	1
Over unsatisfied desire to live in country.....	1	0	1
	3	1	2
<i>Heredity:</i>			
Father alcoholic	1	0	1
<i>Accidental Circumstances:</i>			
Home invaded by roughs.....	1	1	0
<i>Natal:</i>			
Mother died at birth of subject.....	1	0	1

TABLE II.
SUMMARY OF MAJOR FACTORS.
IN ORDER OF FREQUENCY.

Mental Peculiarity	12
Home Conditions	7
Adolescent Instability	3
Mentality	3
Unfavorable Marital Life	1
Environmental	1
Mental Conflict	1
Accidental Circumstances	1
Total	29

We next come to a consideration of the Causative Factors of Violation of Parole. Probably one of the most important factors and one that should be considered as a major factor in nearly all these cases is "Previous Institutional Life." One of the most astonishing results of this study to the author has been to find the number of prisoners receiving a parole sentence who have had previous criminal records with institutional histories. Just how much the prisoner absorbs and how much he radiates during his institutional life is a difficult problem, even for the experienced investigator to determine; let alone determining the content of those accretions and radiations. There can be no doubt, however, that the reaction to institutional life

is registered upon the individual and we will have to designate it by the general term "Previous Institutional Life" as a factor in all cases, until we become more adept in analysis.

Among the factors of violation of parole, of course, should also be included the causative factors of the criminal career.

The enumeration and summary follow:

TABLE III.

	No. times occurring as:		
	Major Factor	Minor Factor	Total
Return to previous alcoholic habits.....	13	4	17
Associating with bad companions.....	4	2	6
Mentality—			
Senile	1	0	
Psychosis	1	0	
Moron	0	3	
	—	—	
	2	3	5
Mental Peculiarity—			
Defective control of sex impulse.....	2	0	
Desire to roam	1	0	
Defective judgment	0	2	
	—	—	
	3	2	5
Physical Condition—			
Large hydrocele	0	1	
Arterio-sclerosis	0	1	
Valvular heart disease	0	2	
	—	—	
	0	4	4
Adolescent instability	2	2	4
Employment ill-fitted	1	1	2
Persecution by wife	1	1	2
Laziness	1	0	1
Ill-treatment by employer	1	0	1
Lack of definite employment.....	1	0	1
Return to previous drug habit.....	0	1	1
Mental Conflict—			
Over lack of confidence on part of employer....	0	1	1
Accidental fight with neighbor.....	0	1	1

TABLE IV.

CAUSATIVE FACTORS OF VIOLATION OF PAROLE.

SUMMARY OF MAJOR FACTORS IN ORDER OF FREQUENCY.

Return to previous alcoholic habits.....	13
Associating with bad companions.....	4
Defective control of sex impulses.....	2

Adolescent instability	2
Mentality (pre-senile)	1
Mentality (psychosis)	1
Desire to roam	1
Employment ill-fitted	1
Persecution by wife	1
Laziness	1
Ill-treatment by employer	1
Lack of definite employment	1
Total	29

In studying any group of delinquents, it is always interesting to learn what set of causative factors predominate, more particularly the relative proportion between the individual factors and those classed as environmental. In order to bring out such a comparison clearly we have divided the factors into two groups; first those which relate more particularly to the individual himself and which we have designated "inherent"; second, those which lie outside the individual and which we call "extraneous."

Such an arrangement of the major factors follows:

TABLE V.
MAJOR FACTORS.
INHERENT.

<i>Criminal Career.</i>		<i>Violation of Parole.</i>	
Defective control for alcohol....	9	Return to previous alcoholic habits, 13	
Adolescent instability	3	Defective control of sex impulses	2
Mentality (moron)	2	Adolescent instability	2
Defective judgment	1	Mentality (pre-senile)	1
Defective self-control	1	Mentality (psychosis)	1
Social suggestibility	1	Desire to roam	1
Mentality (psychosis)	1	Laziness	1
	—		—
	62% 18		72% 21

EXTRANEEOUS.

<i>Criminal Career.</i>		<i>Violation of Parole.</i>	
Father alcoholic	2	Bad companions	4
Early death of mother.....	2	Employment ill-fitted	1
Early death of parents.....	2	Persecution by wife.....	1
Lack of parental control.....	1	Ill-treatment by employer.....	1
Lack of healthy mental interests.	1	Lack of definite employment....	1
Wife immoral	1		
Mental conflict over wife's death.	1		
Home invaded	1		
	—		—
	38% 11		28% 8

We learn from this that the "inherent" factors in each group (Criminal Career and Violation of Parole) are the more numerous, 62% and 72%, respectively, averaging 67%, while the "extraneous" factors in each group comprise only 38% and 28%, respectively, averaging 33%.

In order to learn if this same proportion was maintained among the minor factors, we have arranged these in a similar way, as follows:

TABLE VI.
MINOR FACTORS.
INHERENT.

<i>Criminal Career.</i>		<i>Violation of Parole.</i>	
Mental peculiarity	9	Return to previous alcoholic habits. .	4
Adolescent instability	7	Physical condition	4
Mentality	4	Mentality	3
Heredity	1	Adolescent instability	2
Natal	1	Mental peculiarity	2
		Return to previous drug habit... .	1
	—		—
	22		16
	34%		73%

EXTRANEOUS.

<i>Criminal Career.</i>		<i>Violation of Parole.</i>	
Environmental	20	Bad companions	2
Home conditions	17	Employment ill-fitted	1
Unfavorable marital life.....	3	Persecution by wife.....	1
Mental conflict	2	Mental conflict	1
		Accidental fight	1
	—		—
	42		6
	66%		27%

We find in this case that the same relative proportion obtains in the group "Violation of Parole" between the "Inherent" factors and the "Extraneous," the percentage of the former being 73% and of the latter 27%, but this is not true of the groups of "Criminal Career," where the proportion is reversed, the "Inherent" having only 34% and the "Extraneous" 66%. The cause of this reversal is, I believe, due to the fact that we enumerate many minor causative factors, but assign only one major factor usually, and the minor factors are largely "extraneous" because we are better able to determine minor causes in the environment than we are in the individual. It is only recently that we have begun to study the individual delinquent, and when we find a defect in the individual which has a causative factor

value in his delinquency, perhaps as a result of our enthusiasm over our new methods, it looms up larger in the field than it relatively should. There may be many minor defects which collectively would have a larger causative factor-value than the principal defect.

A summary of the psychological classification follows. It is to be noted that we find only four who could be placed in the competent group, while we place over half of them in the segregable group. The after-history of these cases would prove, we believe, that such a classification was justified.

TABLE VII.
PSYCHOLOGICAL CLASSIFICATION.

Intra-mural Descriptive Designation	Grade of Efficiency.			Total.
	Adult.	Sub-normal.	Segregable.	
COMPETENT (A)—				
1. Accidental Offender .....	..	..	..	..
2. Responsible Offender	2	..	..	2
3. Alcoholic	1	1	..	2
				— 4
DEVIATE (B)—				
1. Recidivist .....	..	4	5	9
2. Alcoholic Degenerate .....	..	6	4	10
3. Congenital Syphilitic .....	..	..	..	..
4. Epileptic .....	..	..	1	1
5. Sex Pervert .....	..	..	..	..
6. Insane .....	..	..	1	1
				— 21
DEFICIENT (C)—				
1. Moron .....	..	..	3	3
2. Feeble-minded .....	..	..	..	..
3. Imbecile .....	..	..	..	..
				— 3
PSYCHOPATH (D) .....	..	..	..	..
DRUG ADDICT (E) .....	..	..	1	1
UNCLASSIFIED (F) .....	..	..	..	..
				— 1
	3	11	15	29

A study of the Order of Birth shows that a larger group occurs as the first born, differing from the total of all classes in that the larger group of the latter occurs as the second born. In both cases, however, the three larger groups are the first, second, and third born, and this is probably true of the population outside of an institution.

The summary follows:

TABLE VIII.
ORDER OF BIRTH.

	Parole Violators	All Classes
Only child	1— 3%	7— 3½%
1st Born	7—27%	49—24½%
2nd Born	6—22%	54—27 %
3rd Born	6—22%	35—17½%
4th Born	2— 7%	20—10 %
5th Born	3—10%	10— 5 %
6th Born	0— 0	8— 4 %
7th Born	0— 0	5— 2½%
8th Born	1— 3%	6— 3 %
9th Born	0— 0	3— 1½%
10th or Over.....	1— 3%	2— 1 %
Maternal and Paternal different.....	1— 3%	1— ½%

An enumeration of groups according to age periods brings out two salient points; first that among the parole violators the largest group is represented by the age period from 31 to 35 years, while in the case of all classes the larger group is from 21 to 25 years, which corresponds nearly to the average age of all at time of admission to prison. Arranging the groups by decades we find among the parole violator the larger group is that from 31 to 40 years, while in the case of all classes the larger group is that from 21 to 30, which latter corresponds to the average age of all those in prison. The summary follows:

TABLE IX.
AGE PERIOD.

Ages	Parole Violators	All Classes
Under 20 years.....	0— 0	4— 2 %
21 to 25 years.....	5—17%	67—33½%
26 to 30 years.....	5—17%	42—21 %
31 to 35 years.....	9—32%	38—19 %
36 to 40 years.....	3—10%	13— 6½%
41 to 50 years.....	4—14%	25—12½%
51 to 60 years.....	2— 7%	6— 3 %
61 to 70 years.....	1— 3%	5— 2½%

The facts relating to recidivism are given in the following summary:

TABLE X.
RECIDIVISM.

	Parole Violators	All Classes
Number with no previous convictions.....	4—14%	65—32½%
Number previously in House of Refuge, or Protectory.....	1— 3%	0— 0
Number previously in Industrial or Truant School.....	6—20%	25—12½%

Number previously in County Jail.....	7—27%	24—12 %
Number previously in Reformatory.....	7—27%	55—27½%
Number previously in Penitentiary.....	11—38%	61—30½%
Number previously in State Prison.....	2—7%	39—19½%
Number previously having had a suspended sentence or probation	1—3%	13—6½%
Number previously having been fined.....	1—3%	8—4 %
Number previously in House of Refuge and Reformatory..	1—3%	1—½%
Number previously in Industrial School and Penitentiary..	2—7%	9—4½%
Number previously in County Jail and Reformatory.....	1—3%	5—2½%
Number previously in County Jail and Penitentiary.....	2—7%	11—5½%
Number previously in Reformatory and State Prison.....	1—3%	10—5 %
Number previously in House of Refuge, Reformatory, and Industrial School	1—3%	1—½%
Number previously in Industrial School, Reformatory, and Penitentiary	1—3%	3—1½%

SUMMARY.

	Parole Violators	All Classes
Recidivists*	25—86%	135—67½%
Non-Recidivists	4—14%	65—32½%

*In this case we use the term to indicate those who have been previously convicted or sent to an institution.

The following is a summary of the crimes for which they were sentenced to prison. The order of frequency among the parole violators differs from that of all classes, but the ten most frequent for all classes would be included in the list for which the parole violators were sentenced, so that no significance can be attached to the differing order of frequency.

TABLE XI.
SUMMARY OF OFFENSES FOR WHICH CONVICTION WAS HAD.

	Parole Violators	All Classes
Burglary, 3rd	10—34%	42—21 %
Grand Larceny, 2nd	4—17%	17—8½%
Assault, 2nd	2—7%	10—5 %
Criminally Receiving Stolen Property	2—7%	0—0
Burglary, 3rd, and Grand Larceny, 2nd.....	2—7%	8—4 %
Burglary, 3rd, and Petit Larceny.....	2—7%	10—5 %
Abandonment of Children	1—3%	2—1 %
Assault, 1st	1—3%	2—1 %
Attempt Robbery, 1st	1—3%	0—0
Forgery, 2nd	1—3%	9—4½%
Manslaughter, 2nd	1—3%	3—1½%
Robbery, 1st	1—3%	9—4½%
Attempt Suicide	1—3%	0—0

A new arrangement has been adopted for the determining of excessive indulgence in various habits. This has been fixed for these statistics as any amount exceeding the following: Alcohol—Three glasses of whiskey a day, or four glasses of beer a day, or any history of intoxication. Tobacco—Three cigars a day, or ten cigarettes a day, or four pipesful a day. Drugs—Any use of same. Sexual—Inter-course three times a week.

By thus establishing a standard our readers will understand our terminology. We realize that the amounts fixed are arbitrary, but it enables us to establish three approximately definite degrees in their use, excessive, moderate, total abstainer, the first two terms of which have previously been misleading.

TABLE XII.
RELATIVE DEGREES OF INDULGENCE.

Previous Excessive Indulgence in Habits	Parole Violators	All Classes
Alcohol	25—86%	130—65 %
Tobacco	6—20%	37—18½%
Drugs	1—3%	5—2½%
Sexual	5—17%	24—12 %

TOTAL ABSTAINERS FROM ALCOHOL.

Parole Violators	All Classes
4—14%	25—12½%

It is interesting to note that these four total abstainers are not the same four who have had no previous convictions, but they are among the youngest of parole violators.

In a summary of the causes of leaving home we have separated them into two groups; first those relating to the prisoner himself, and second those relating to other causes. Comparing these we find that they are about equally divided.

TABLE XIII.

Relating to Himself:

To get married.....	3
Wanderlust	7
Sent to correctional institution	5
	—15

Relating to Other Causes:

Changes in family affairs.....	6
Changes in work.....	7
	—13
Not known	1
	—
	29

Again dividing them into other groups we find the following:

Due to abnormal conduct.....	13
Due to natural causes.....	15
Not known	1
	—
	29

In this grouping we also find the causes are about evenly divided.

In conclusion we may state that there are many other phases that are not included, because of the limitation of space, which give interesting side lights on this group. But perhaps the method of study is of greater value than the content.

JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE

CHESTER G. VERNIER, ELMER A. WILCOX AND WILLIAM G. HALE

FROM WILLIAM G. HALE

CARRYING CONCEALED WEAPONS.

People v. McPherson, 115 N. E. 515, N. Y. "*Bludgeon*." Penal Law (Consol. Laws C. 40). Par. 1897, as amended by Laws 1915, C. 390, and section 1898, provides for the punishment of any person who carries or possesses any concealed instrument commonly known as a bludgeon, etc., or any other dangerous or deadly weapon. Held, that part of a boy's baseball bat, the upper end of which had been broken off, is a bludgeon.

CONSPIRACY.

Berstein v. United States, 238 Fed. 923. *Variance*. The indictment was for a conspiracy to present and prove a false claim against a bankrupt. The indictment charged both the conspiracy and the overt act in Richmond, Va. The proof was that the conspiracy was entered into in the City of Philadelphia, and that only the overt act of presenting and proving the false claim was committed in the City of Richmond.

Held, this was not a fatal variance. The conspiracy formed in Philadelphia is to be considered as having extended into Richmond, where the overt act in pursuance of it was committed.

CONSPIRACY TO SMUGGLE CHINESE.

Sam Yick et al v. United States, 240 Fed. 60. *Criminal Act induced by government officers*. The defendants had approached a certain Chinese immigration inspector with a view to bribing him to let them bring Chinese from Mexico. The inspector reported this to the chief inspector and the U. S. District Attorney and was advised by them "to go ahead and try to apprehend him (Sam Yick) by going in with him." Thereafter several meetings were had between the inspector and Yick. A verdict of conviction was reversed on the ground of improper instructions relating to the effect of the acts of the inspector in bringing about the alleged criminal acts. The court in reversing the case said, "It is of course, not a matter for this court to say what conclusion the jury would or should have drawn from the testimony tending to show that the alleged conspiracy was first suggested by the officers of the law, and that they lured the alleged conspirators on to commit the necessary overt act or acts and thus consummate the alleged crime; all of those matters being exclusively for the determination of the jury. And while it may be true that the mere aiding of one in the commission of a criminal act by a government officer or agent does not preclude the conviction of the party committing the crime, yet where the officers of the law have incited the party to commit the crime charged and lured him on to its consummation, the law will not authorize a verdict of guilty."

ERROR.

People v. O'Brien, 115 N. E. 123 (Ill.). *When erroneous ruling as to admission or exclusion of evidence is harmless*. A judgment of conviction of the crime of receiving a bribe, as a police officer, for furnishing protection to

certain individuals engaged in operating confidence games, was sustained notwithstanding certain admitted errors in the reception of improper evidence. The court said: "It is essential that the defendant shall be accorded all the rights he is entitled to under the law, and, if errors were committed denying him substantial rights, a reversal of the judgment of conviction would be required. It is not necessary, however, to sustain a conviction that the record should be free from all error, and where guilt is conclusively proven by competent evidence, and no other rational conclusion could be reached but that defendant is guilty, it would require more substantial errors than any shown by this record to justify a reversal of the judgment, and it is affirmed."

For a discussion of the state of the law in Illinois on this question and a consideration of the principles that ought to control, see a note by Dean John H. Wigmore in 12 *Illinois Law Review* 39, under the heading, "New Trial for Erroneous Ruling on Evidence."

EVIDENCE.

Knoell et al v. United States, 239 Fed. 16. *Testimony of an accomplice.* By the decided weight of authority a jury may rely solely upon the testimony of an accomplice, but the judge should caution them as to unreliable character of such testimony and against believing it unless it has been corroborated.

Declarations of the accused. Testimony given before the referee in bankruptcy by those subsequently accused of conspiracy to receive property of the bankrupt, is voluntary and admissible in the subsequent prosecution though they were subpoenaed to testify before the referee, if when called they made no claim of privilege to avoid incrimination. The court said, "They were attended by counsel, and were examined without claiming the right to be silent because their answers might criminate them. Clearly the subpoena did not compel them to testify; it only compelled them to attend; and whatever testimony they gave afterwards without claiming their privilege was voluntary."

EVIDENCE.

Callahan v. United States, 240 Fed. 683. *Complaint by victim of rape.* In a prosecution for statutory rape upon a girl under the age of consent, testimony that the girl informed a girl acquaintance and friend, whom she met on the street shortly after leaving the place of the act, of the circumstances and that she had received compensation, is not admissible as part of the *res gestae*, it appearing that the act complained of was not the first act of its kind and the statement being in the nature of interesting information between intimate friends, instead of a spontaneous exclamation produced by the shock of an outrage.

EVIDENCE.

Ruse v. State, 115 N. E. 778 Ind. *Bloodhounds.* Evidence as to the conduct of bloodhounds in trailing persons accused of crime is inadmissible. Even under the most favorable circumstances it is attended with some degree of uncertainty, which may readily lead to the conviction or accusation of innocent persons. "Both reason and instinct condemn such evidence, and courts should be too jealous of the life and liberty of human beings to permit its reception in a criminal case as proof of guilt." Lairy, C. J., and Myers, J., dissent. Authorities pro and con reviewed.

INDICTMENT.

People v. Osborne, 115 N. E. 890, Ill. *Surplusage*.

The following comment is made by the court upon the indictment under which the defendant was convicted of an assault with a deadly weapon with intent to kill:

While this "indictment could not be used as a model for faultless pleading, its defects are not such as to destroy the sufficiency of the charge against plaintiff in error. It is contended by plaintiff in error that the language in the first count, 'and the said Harry Osborne in and upon clothing, to wit, coat, of him, the said Daniel Smith, then and there feloniously and unlawfully did shoot,' and in the second count, 'and the said Harry Osborne at, against, into, and upon the clothing of him, the said Daniel Smith, then and there feloniously and unlawfully did shoot,' is descriptive of the particular manner in which the offense charged was committed, and while it might have been admitted from the indictment, having been thus alleged, it becomes an essential ingredient of the charge made. From this premise it is then argued that the indictment does not charge the commission of any offense against plaintiff in error, because it does not state where the clothing was, and that if it was not on or about Smith's person no assault could have been committed upon Smith by shooting the clothing. It is also argued that, even if plaintiff in error deliberately shot into the clothing while it was on Smith's person, and that was all he was intending to do, that act of itself negatives any intention of assaulting Smith. On the other hand, the people contend that the language last above quoted is mere surplusage and should be rejected.

The indictment will not bear the construction sought to be placed upon it by plaintiff in error. It is quite clear that the language pointed out was not meant to be descriptive of the assault made, but was simply intended to describe the effect of the assault. The only reasonable construction which the language used in the two counts of this indictment will bear is that plaintiff in error made a felonious assault upon Smith with a gun or rifle with intent to kill him, and that in making such assault he fired a shot which struck Smith's clothing. The statement in regard to the effect of the assault was unnecessary and under the authorities may be treated as surplusage. An averment in an indictment may be treated on the trial as surplusage and be rejected where it can be stricken out without vitiating the indictment."

SETTING ASIDE VERDICT.

People v. Jurek, 115 N. E. 644, Ill. *Jury judges of law as well as fact*. Under a statute providing that juries shall be judges of the law and fact, the court cannot direct a verdict of not guilty, but may, if the evidence is thought insufficient, advise the states attorney, that a verdict of guilty, if returned, will be set aside.

Comment. The absurdity of the law which makes juries judges of the law as well as the fact has been often commented upon. That it is absurd is fully conceded except by those who desire additional loopholes for securing the acquittal of those in fact guilty of crime. The above decision furnishes an additional reason for changing the law.

TRIAL—CONDUCT OF COURT.

People v. Lurie, 115 N. E. 130, (Ill.). *Remarks of Court as Prejudicial error. Right of Court to question witnesses.*

"The general rule is that the trial judge has a right to ask questions of witnesses or call other witnesses to the stand in order to ascertain the facts and elicit the truth as to the points at issue. No well-considered authority has ever stated that the trial judge is a mere moderator or umpire between the contending parties. In order to establish justice and prevent wrong, he has a large discretion in applying the rules of practice; but all this must be done in a fair and impartial manner, without in any way showing bias for or prejudice against either party to the litigation. The respective counsel in any case are usually much more familiar with the facts than the presiding judge, and as a rule the trial will proceed in a more orderly and satisfactory manner when they are allowed to examine and conduct the examination of the witnesses. It is important, however, that the trial judge should also become acquainted with the facts, and on this account he may, if necessary to ascertain them, propound questions to the witnesses. It is the judge's duty to see that justice is done, and, where justice is liable to fail because a certain fact has not been developed or a certain line of inquiry has not been pursued, it is his duty to interpose and either by suggestions to counsel or an examination conducted by himself avoid the miscarriage of justice; but in so doing he must not forget the function of the judge and assume that of the advocate."

It is, however, an abuse of discretion for the presiding judge to so frame his questions as to intimate any opinion as to the credibility of witnesses or to convey to the jury the court's opinion of the evidence in the case. In this case, where the evidence of the guilt of the accused was close, the action of the trial judge in making statements, and asking questions of witnesses in such form as to lead the jury to believe he thought accused was guilty of murder as charged in the indictment, and that he thought certain witnesses for the defense were not telling the entire truth, and that certain witnesses for the state were stating the facts as they actually existed, constituted an abuse of his discretionary duties and as the appellate court cannot say that regardless of this abuse the jury could reach no other verdict, it was prejudicial to the defendant.

WHITE SLAVE ACT.

Van Pelt v. United States, 240 Fed. 346. *Purpose of Transportation.* A man who procured the inter-state transportation of a girl, with whom he had had intercourse whenever he sought it during the past three years, for the purpose of procuring a place where she could remain until after her confinement, cannot be convicted under the White Slave Act, though he accompanied her and anticipated that he would have intercourse with her after she left the state, if such anticipation played no part in inducing him to procure the transportation. Woods, J., dissenting.

FROM C. G. VERNIER.

ABANDONMENT OF CHILD.

Shelton v. State. Ga. 91 S. E. 923. *Application of statute to unborn child.* A father who, within this state, wilfully and voluntarily abandons his child

before it is born, and persists in the abandonment afterwards, leaving it in a dependent condition, is guilty of a misdemeanor under section 116 of the Penal Code of 1910; but a father is not guilty under that section unless the child has been born. Accordingly no offense was set out in an indictment charging the defendant with abandoning his minor child "not yet born," and the court erred in overruling the demurrer thereto. *Bull v. State*, 80 Ga. 704, 6 S. E. 178; *Boyd v. State*, 18 Ga. app 623, 89 S. E. 1091.

BAIL.

In re Welisch. Ariz. 163 Pac. 264. *Effect on bail before conviction of adoption of initiative measure abolishing capital punishment.* Const. art. 2, sec. 22, provides that all persons charged with crime shall be bailable, except for capital offenses, when the proof is evident or the presumption great. Pen. Code 1913, sec. 1188, provides that a defendant charged with an offense punishable with death cannot be admitted to bail, where the proof of crime is evident, or the presumption great. Section 1189 provides, if the charge is for "any other offense," accused may be admitted to bail before conviction as a matter of right. The people of Arizona adopted an initiated measure abolishing capital punishment for murder. Held, there being no longer any offense punishable with death, section 1189 provides in effect that any person charged with crime may be admitted to bail before conviction as a matter of right, for the law-making power can enlarge the constitutional grant, so as to include persons convicted of crime and give to such persons in all cases the right to be admitted to bail on appeal.

EVIDENCE.

Damas v. People. Colo. 163 Pac. 289. *Repudiated confession as direct evidence.* Under Rev. St. 1908, Sec. 1624, declaring that no person shall suffer the death penalty who shall have been convicted on circumstantial evidence alone, testimony as to an alleged confession by accused which he repudiated and denied is not direct evidence which would justify a conviction and imposition of the death penalty, all other evidence in the case being circumstantial.

A confession repudiated by accused should be received with caution, being admitted as an exception to the rule against hearsay and open to many objections and while testimony as to an alleged confession is direct evidence of the making of the confession, it is not direct evidence of the facts contained in the confession.

Gabbert, C. J., and Garrigues, J., dissenting.

FALSE ADVERTISING.

State v. Massey. Wash. 163 Pac. 7. An advertisement that a piano was \$400, but now \$200, does not amount to a statement that the market value of the instrument was \$400, but was now \$200, so as to render the advertiser guilty of violating Rem. Code 1915, Sec. 2622-1, declaring that any person who with intent to sell merchandise publishes an advertisement which is untrue, deceptive, or misleading, shall be guilty of a misdemeanor, notwithstanding the market value of the piano was never \$400; the obvious meaning of the advertisement being that its selling price, which had been \$400, was reduced to \$200.

JURY.

Perry v. People. Colo. 163 Pac. 844. *Jury reading false newspaper article.* The reading by members of the jury of a newspaper article falsely stating the finding in defendant's cell of articles to effect an escape in case of conviction requires a reversal; it being impossible to say that it was not, as was its tendency, prejudicial to defendant.

Garrigues, J., dissenting.

LOTTERIES.

State v. Gilbert. Dela. 100 Atl. 410. *Element of chance.* A certificate, stating that a certain article would be given without extra charge to the holder of certificate bearing number corresponding to the last three figures of the Philadelphia bank clearings as published, etc., made the rights to such article depend on chance in the nature of a lottery prohibited by Rev. Code 1915, Sec. 3564, in that it provided a chance to get one of a list of articles without payment of the full price and a scheme for the distribution of money or property by chance is a lottery.

The fact that the element of chance pertaining to the purchase of a ticket goes to the amount of return rather than to the fact of any return does not prevent its being a lottery, since as it gives the purchaser a chance to obtain something more than he paid for, the gambling element is there; the difference between such transaction and a simple wager being only in degree.

SENTENCE.

Owen v. State. Okla. 163 Pac. 548. *Grounds for modifying sentence in upper court.* The record shows that on September 4, 1916, the defendant was arraigned, for murder and on September 6th he filed a motion for continuance based on the absence of material witnesses, one of whom was a non-resident of the state. On the same day the motion was overruled by the court, and the defendant was put upon trial. Held, that the affidavit for continuance is sufficient, because it fails to show that the defendant could procure the attendance of such non-resident witness, and fails to state that he intends to take the deposition of such non-resident witness. However, technical objections should not ordinarily prevent the granting of a continuance, and in this case the county attorney should have admitted that said witness, if present, would testify as stated in the defendant's affidavit, and that said affidavit might be read and treated as the deposition of the absent witness, and for this reason the judgment and sentence of death is modified to imprisonment for life at hard labor.

TRIAL.

State v. Rogers. N. Car. 91 S. E. 854. *Effect of improper remark by court after its withdrawal.* In prosecution for cruelty to animals, it was prejudicial error for the court, during examination of defendant, to say, "Answer yes or no, and don't be dodging;" and such error cannot be cured by subsequent admonition, however often repeated, and however strong, not to regard the word "dodging."

TRIAL.

People v. Herrera. Calif. 163 Pac. 879. *Effect of improperly taking exhibits into jury room.* In a homicide case, where the door through which bullets were fired was introduced in evidence, as well as blackboard illustrations, the fact that the jury were allowed to carry such exhibits with them in their deliberations, though they were not included among the things which the jury might, by Pen. Code, Sec. 1137, carry into the jury room, does not warrant reversal; there being no showing that the jury used such articles in their deliberations, or received any improper impressions therefrom.

SELF-DEFENSE.

People v. McDonnell. Calif. 163 Pac. 1046. *Duty to retreat.* Where defendant was violently and inexcusably beaten in his own home by deceased, a man of quarrelsome disposition, and ordered deceased to leave the house, and told him he would kill him if he returned, whereupon deceased apparently seized a deadly weapon, and turned with manner and language plainly indicating his intention to kill or seriously injure defendant, defendant was not required to retreat, even though it would not have increased his peril, but had a right to stand his ground and slay his adversary if he believed himself in imminent peril.

NOTES AND ABSTRACTS

ANTHROPOLOGY—PSYCHOLOGY—LEGAL MEDICINE

Report of the New York Psychiatric Society Re Clinical Psychologists.

At a meeting of the New York Psychiatric Society, held December 6, 1916, a committee was appointed to inquire into the activities of psychologists and more particularly of those who have termed themselves "clinical psychologists" in relation to the diagnosis and treatment of abnormal conditions. This committee desires to make the following report:

"We have been greatly impressed by the earnestness and success with which psychologists are endeavoring to make their science serviceable in dealing with the practical affairs of every-day life. We wish to record our belief in the wide usefulness of the application of psychological knowledge and of the findings of certain psychological tests in such fields as the modification of educational methods with reference to individual differences, the vocational problems presented in various special industrial operations, the development of scientific methods in advertising, salesmanship and other means of business appeal and in the investigation of such special problems as the relation of environmental factors to the quality and quantity of the output of the individual. We feel that the results to be attained in these fields justify the belief that the widening of the scope and application of psychological knowledge will make psychology one of the most useful of the social sciences instead of a narrow field for study and research with but little actual contact with the practical problems of life.

"We have observed with much distrust, however, the growing tendency of some psychologists, most often, unfortunately, those with the least amount of scientific training, to deal with the problem of diagnosis, social management and institutional disposal of persons suffering from abnormal mental conditions. We recognize the great value of mental tests in determining many questions which arise in dealing with such patients, but we have observed that most of such work which is being done by psychologists and particularly by persons whose training in psychology is confined entirely to learning how to apply a few sets of these tests, is carried on in schools, courts, correctional institutions and so-called 'psychological clinics,' quite independently of medically trained workers who are competent to deal with questions involving the whole mental and physical life of the individual.

"We believe that the scientific value of work done under such conditions is much less than when carried on in close co-operation with that of physicians and that serious disadvantages to patients suffering from mental disorders and to the community are likely to result and, in many instances which have come to our attention, have resulted. This is especially true when the mental condition of the patients examined involves questions of diagnosis, loss of liberty or educational issues more serious than redistribution of pupils or rearrangement of courses of study. In spite of these facts two states have enacted laws permitting judges to commit mentally defective persons to institutions upon the so-called expert testimony of 'clinical psychologists' regarding the abnormal mental conditions from which patients are alleged to suffer. We believe that the examination upon which a sick person is involuntarily committed to permanent institutional custody is one of the most serious responsibilities assumed by physicians and that in no cases whatever should it be entrusted to persons without training enabling them to take into consideration all the medical factors

involved. The same is true of mental examinations of juvenile delinquents and criminals whose whole careers depend, in many cases, upon the determination of their condition.

"We desire to make the following specific recommendations:

"1. We recommend that the New York Psychiatric Society affirm the general principle that the sick, whether in mind or body, should be cared for only by those with medical training who are authorized by the state to assume the responsibility of diagnosis and treatment.

"2. We recommend that the Society express its disapproval and urge upon thoughtful psychologists and the medical profession in general an expression of disapproval of the application of psychology to responsible clinical work except when made by or under the direct supervision of physicians qualified to deal with abnormal mental conditions.

"3. We recommend that the Society disapprove of psychologists (or of those who claim to be psychologists as a result of their ability to apply any set of psychological tests) undertaking to pass judgment upon the mental condition of sick, defective or otherwise abnormal persons when such findings involve questions of diagnosis, or affect the future care and career of such persons.

"CHARLES L. DANA, Chairman,

"ADOLF MEYER,

"THOMAS W. SALMON."

Logical Analysis of Subscribed Signatures.—Every signature, which is subscribed, must be either of the true name, or not of the true name of the writer.

If the signature is of the true name of the writer it must have been written either with, or not with the intent to thereby identify the writer.

If the signature is of the true name, written with the intent to identify the writer, it will have no conscious or voluntary variation from the usual and customary manner or style of signature, automatically natural to the writer under the conditions under which the signature is written. To make it otherwise would be but to surely defeat the very intent of the signer.

If the signature is that of the true name, but is not written with the intent that it shall identify the writer, it may be written in one of the three following ways: Firstly, if there be simply an absence of any active intent that it shall identify the writer, the signature will be automatically written in the usual and customary style natural under the circumstances under which the writing is made. Secondly, if there be but a moderately active intent that the signature shall not identify the writer, he will seek to modify his conscious habits, which he recognizes as affecting the general pictorial appearances of his signature, in so far as he can control them, and deems it necessary to accomplish his object. Thirdly, if there is a strong, positive intent that the written signature shall not identify the writer, he will, to the best of his ability and understanding, not only endeavor to write the signature so dissimilar to that of his own usual and customary automatic hand, that it shall not only be not taken to be his signature, but will even, from its marked similarity to the usual style of signature of another particular person, be taken to have been written by that person.

If the signature is however not that of the true name of the writer, it

must have been written either without, or with the intent to appear to identify itself with some other particular person than the writer.

If the signature is not that of the true name of the writer and has not been written with the intent to be made to appear to be the true signature of some other particular person, the writer will usually deem it to be quite unnecessary to attempt to conceal his own conscious automatic habits, as he must do when he seeks to disguise his own true name signature. He very naturally deems the altered name will be of itself, a sufficiently good disguise for his self-concealment.

If the signature is not that of the true name of the writer, and has been written with the intent that it shall appear to be the true name signature of some other particular person, then there are involved in this endeavor all the cumulative difficulties, not only of the concealment of all of the conscious and unconscious automatic habits of the true writer, but of the assumption of those of the same classes of habits which exist in the genuine signatures of the person simulated. This is a task well-nigh never quite wholly possible of successful accomplishment when subjected to the careful analytical examination of an experienced expert, who has been provided with the proper amount of standard writings whereby to determine the various writing habits of the purposed signer.

A competent expert learns through experience to know what variations of any writer's conscious voluntary, or automatic unconscious habits he may reasonably expect to meet with under any one of the above mentioned possible varying conditions of signature writing. What are the habits exhibited by any writer may be learned only through a careful analytical examination of a number of authentic genuine samples, sufficiently large and varied to furnish examples of them all, and to establish the fact that they are truly habits, as distinct from merely accidental occurrences. Any writing consciously made for the purpose of comparison is of but inferior value, except to refute some claim of the writer. The only standards of full value are such as were not made at all for that special purpose, but were made under as similar conditions as possible as to time, manner and purpose as is presumed to have been that of the questioned writing.

As the proper and legitimate purpose of a signature subscribed to a document is to authenticate it, and to identify the writer, it is not to be expected that any one other than a person signing his own true name will willfully venture to materially alter the usual and customary general pictorial appearance of that signature, for that one alone would be competent to successfully establish the fact that the signature was indeed genuine. For any one else to thus willfully raise the doubt would be but to surely defeat the very purpose of making the signature.

A well grounded valid opinion of the genuineness of any questioned signature may be based upon the following axioms. Every one who has practiced writing long enough to do so automatically, having the mind intent upon the subject matter, and not at all upon the writing itself, has inevitably acquired certain writing habits. Many of these will be common to other writers. A few will be uncommon, and perchance some special habit may even be peculiar to the individual alone. Many of the habits being voluntary and conscious ones, are subject to more or less immediate control of the will. There will how-

ever, be many other habits, which do not materially affect the general pictorial appearance of the writing, and are quite involuntary and unconscious. They cannot therefore be modified immediately at will. They can be changed only gradually, through the formation of new habits which displace the former ones.

No two samples of genuine free-hand writing are ever exactly facsimile of each other in all respects. They may appear as much alike on casual inspection, as any two peas grown in the same pod, but, like the peas, they can always be differentiated from each other on careful examination. The relative value of points of similarity or dissimilarity differ very greatly. All writing in order to be readable, must conform in many respects to the commonly accepted conventional type.

If in a questioned writing there is a persistent reappearance of very many of the habits of the standards, especially if they are of the involuntary automatic variety, which do not materially affect the general pictorial appearance, or is a singular habit of this standard, if such there be, and if also these are supplemented by a like persistent absence of other habits, very common to writers in general, or which are incongruous with those of the standards, then the culminative evidence of such a series of coincidences will fully warrant the opinion that they, taken together, cannot be due to any accidental chance, but, beyond any reasonable doubt, must be due only to the one cause of having had the same origin, that is of having been written by one and the same hand.

DR. BENNETT F. DAVENPORT, *Medico-legal Expert, Boston, Mass.*

Study of Delinquent Boys Released from Institutions.—The Seattle Juvenile Court Report for the year 1916 contains a study of the after-career of 408 delinquent boys who were committed from the King County Juvenile Court to the Boys' Parental School and the State Training School during the five-year period 1911-1915. The study was made under the direction of Professor Walter G. Beach, Professor of Sociology at the University of Washington. The following table and paragraphs are quoted from the report:

"Passing immediately to the statistical facts we find that 408 boys were committed by the King County Juvenile Court during the five-year period from January 1, 1911, to December 31, 1915, to correctional schools, as follows: Three hundred forty-six, or 84.8 per cent, were sent to the Parental School and sixty-two, or 15.2 per cent, to the State Training School.

"The present whereabouts and occupations of these boys will be noted first without reference to the segregation by institutions.

144, or 35.3%, are now at work.

56, or 13.7%, are now attending public school.

67, or 16.5%, are known to have moved to other towns, states or counties.

64, or 15.7%, have escaped from schools, or disappeared following parole, and there is no official knowledge of their whereabouts.

19, or 04.7%, are known to be at liberty and in frequent trouble.

11, or 02.7%, are free and simply loafing.

4, or 00.9%, are in the army or navy.

4, or 00.9%, are dead.

24, or 05.9%, are now in the Parental School.

6, or 01.5%, are now in the State Reformatory.

9, or 02.2%, are now in the State Institution for Feeble-Minded."

* * * * *

"A great and obvious need of these institutions is a far more complete and definite parole system. For the boys who have left an earlier for a later house of correction, and for the large number who have disappeared, much of their trouble, statistics from another study show, could have been prevented had the boys been properly paroled; that is, had they been placed in carefully searched out private homes. But for this great need there is practically no provision made.

"The Parental School should, perhaps, not serve in the capacity of a placing agency, since it has jurisdiction only during the school age, and passing that age its wards may, if desirable, be remanded to the court for further disposition. The State Training School, on the other hand, has jurisdiction until the child is twenty-one years of age. For the entire number of boys at the State Training School (140-200) only one parole officer is provided, and to his ordinary duties he has to add that of bringing in to the school all the boys committed to it by the different county courts. On the face of it his work becomes impossible. Even for the State Reformatory, with its 300 to 400 men, only one field officer is maintained in the parole department.

"Surely the state sins when it turns a homeless and jobless boy out of an institution with no place to go often but to a broken home, and nothing to do often but to loaf. A safe conclusion is that the problem of juvenile delinquency will never be solved but by means of an institution. Protective social agencies must extend themselves into the field, and must give help to the boy before delinquency ever comes, or after delinquency has received correction. That the institutions of this country and of this state seem eager and willing to do. That service they should be empowered by the state to render."

ALAN A. PHILLIPS, *Seattle*.

A Study of the After-Career of 408 Delinquent Boys Who Were Committed from the King County (Washington) Juvenile Court to the Boys' Parental School and the State Training School During the Five-Year Period 1911-1915.—Under the direction of Prof. Walter G. Beach, Professor of Sociology at the University of Washington, and at the request of Dr. Lilburn Merrill, of the juvenile court, a study was carried on over several months of last year, of all delinquent boys committed from the King County Juvenile Court to the Seattle Parental School and the State Training School through the five-year period of time opening January 1, 1911, and closing December 31, 1915.

The records of the boys in every instance have been followed up from the time they first came into court, through their commitment and subsequent parole or release, if either of those events had yet transpired to the end of the year 1916. This work has been accomplished through consultation of the records of the Juvenile Court, School Attendance Department, Parental School, State Training School and State Reformatory, all of which institutions were visited by the writer and the officials interviewed regarding their knowledge of the individual boys.

Passing immediately to the statistical facts we find that 408 boys were com-

mitted by the King County Juvenile Court during the five-year period from January 1, 1911, to December 31, 1915, to correctional schools, as follows: Three hundred forty-six, or 84.8 per cent., were sent to the Parental School and sixty-two, or 15.2 per cent., to the State Training School.

The present whereabouts and occupations of these boys will be noted first without reference to the segregation by institutions.

144, or 35.3%, are now at work.

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4, or 00.9%, are dead.

24, or 05.9%, are now in the Parental School.

6, or 01.5%, are now in the State Reformatory.

9, or 02.2%, are now in the State Institution for Feeble-Minded.

Of the boys at work it was found that they were engaged in everything from making a precarious living by selling papers to clerking, serving on the messenger force, working on a farm, or at other like unskilled occupations.

Those lads committed to the State Institution for Feeble-Minded were pronounced types of defectives. Several morons of varying degree of intelligence who should have been at an institution for feeble-minded were found both at the Parental School and the State Training School. The boys at liberty and reported to be in trouble simply were as yet within the law in their difficulties, with the exception of two who had been jailed in other states.

The boys indicated as loafing were known to have no jobs, although the reason for their being out of work may have been through no fault of theirs. Of the four boys dead, three had been killed in accidents; and among the sixty-four noted as "disappeared" were included runaways both from institutions and homes or lads who, as so often happens in a city, had simply dropped out of sight.

Of the 346 boys committed to the Parental School, excepting the twenty-four still at that institution, but twenty-nine were ever known subsequently to have been in like schools of correction. These twenty-nine were placed as follows: One at the Tacoma Parental School, four at Washington State Reformatory, twenty-two at Washington State Training School, and two in correctional institutions in other states. That is, a total of only twenty-nine boys, or but 8.3 per cent., of the boys sent to the Parental School are known to have matriculated subsequently in the State Training School or similar institutions. It should be said, however, in justice to a goodly number of the boys committed to the Parental School that they never have been delinquents, but are merely dependents. The normal expectation would be that such boys should lead useful, balanced lives, after their release from any protective institution. That expectation, consultation of the table of percentages will show, is definitely realized.

Of the whole number committed to the school within the 1911-1915 period, only 8.3 per cent. have ever been recommitted to other state and reformatory institutions. If we were to add to this number the 4.7 per cent. at liberty, but known to be in frequent trouble, we would have the low percentage of 13.0

per cent. of boys who can directly be said, within the five-year period, to have proved themselves unsatisfactory in their citizenship following their release.

Of the sixty-two sent to the State Training School, six later were committed to the Washington State Reformatory, and one was in an Oregon jail. That is, about 11 per cent. of the State Training School graduates are known to have served or to be serving terms in a prison. Of the six who had been sent to the State Reformatory, three are paroled, of whom two are doing well and one has violated his parole and disappeared; the other three are still in the Reformatory.

These figures do not include seven boys from the Parental School and two from the State Training School who have been sent to the State Institution for Feeble-Minded for custodial care on account of imbecile or feeble minds. Unhappily, not nearly all the defectives are committed in an institution for feeble-minded. This statement is proved by the records of the State Training School and Parental School. They show three defectives now at the State Training School, five at the Parental School, twenty-one released from these institutions either through coming of age, on parole, or as runaways, and one jailed in another state. Of the twenty-one released a few are at work, three are in school, and the others are largely included among the loafers or the boys disappeared, in the above-named groups. The reason for this is the lack of room in the Institution for Feeble-Minded at Medical Lake.

A great and obvious need of these institutions is a far more complete and definite parole system. For the boys who have left an earlier for a later house of correction, and for the large number who have disappeared, much of their trouble, statistics from another study show, could have been prevented had the boys been properly paroled; that is, had they been placed in carefully searched out private homes. But for this great need there is practically no provision made.

The Parental School should, perhaps, not serve in the capacity of a placing agency, since it has jurisdiction only during school age, and passing that age its wards may, if desirable, be remanded to the court for further disposition. The State Training School, on the other hand, has jurisdiction until the child is twenty-one years of age. For the entire number of boys at the State Training School (140-200) only one parole officer is provided, and to his ordinary duties he has to add that of bringing into the school all the boys committed to it by the different county courts. On the face of it his work becomes impossible. Even for the State Reformatory, with its 300 to 400 men, only one field officer is maintained in the parole department.

Surely that state sins when it turns a homeless and jobless boy out of an institution with no place to go, often, but to a broken home, and nothing to do, often, but to loaf. A safe conclusion is that the problem of juvenile delinquency will never be solved only through and by the means of an institution. Protective social agencies must extend themselves into the field, and must give help to the boy before delinquency ever comes, or after delinquency has received correction. That the institutions of this country and of this state seem eager and willing to do. That service they should be empowered by the state to render.—Alan A. Phillips in the Report of the Seattle Juvenile Court for the year 1916.

COURTS—LAWS.

Developing Standards in the Work of Domestic Relations Courts.—At the call of a committee appointed at the last annual meeting of the National Probation Association in Indianapolis, a group of men and women engaged or especially interested in the work of Domestic Relations Courts met in conference in the United Charities Building, New York City, on February 16th. The object of the meeting was the formulation of standards as to the work of domestic relations courts preparatory to the preparation of a thorough-going report which the committee plans to present at the next annual conference of the association. The meeting was called to order by the chairman of the special committee, Judge Charles W. Hoffman of the Domestic Relations Court of Cincinnati. Other members of the committee who were present were Judge Edward J. Dooley of the Domestic Relations Court of Brooklyn; Mrs. Jane D. Rippin, Chief Probation Officer, Municipal Court, Philadelphia; and Mr. Monroe M. Goldstein, Secretary of the National Desertion Bureau of New York. Among others present were Mr. William H. Baldwin of Washington, D. C., Mr. Arthur W. Towne, Superintendent of the Brooklyn Society for the Prevention of Cruelty to Children; Edwin J. Cooley, Chief Probation Officer of the Magistrates' Courts, Charles L. Chute, Secretary of the State Probation Commission, probation officers and representatives of the Domestic Relations Courts of New York City, and also representatives of the Charity Organization Society, Association for Improving the Condition of the Poor, and others.

The meeting came to general agreement upon the following principles: The Domestic Relations Court, better termed "The Family Court," in any community should have exclusive jurisdiction of the following cases: Non-support, desertion, all children's cases, including contributory delinquency; adoption and guardianship; bastardy; divorce, and alimony. The court should have ample provision for probation officers, a maximum of fifty cases for each officer should not be exceeded. It was the general consensus of opinion that special investigating officers should be provided. Every court should be equipped with psychopathic-psychological laboratories for proper diagnosis. Power to make mental and physical examinations should be given to the court. Informal or summary procedure should be the rule. Proceedings in these courts should be conducted in as private a manner as possible. All publicity should be discouraged.

After the general conference, the committee met in executive session and made plans for the drafting of its joint report, which was presented at the Annual Conference of the National Probation Association to be held in Pittsburgh, June 5 and 6, 1917.

CHARLES L. CHUTE, *Sec'y National Probation Association,*
Albany, N. Y.

The Need For a Public Defender.—In an article written by Judge Nott, of the Court of General Sessions, published recently, the learned judge sets forth certain arguments in opposition to the Public Defender idea, and favoring the plan of the "Voluntary Defenders' Committee," about to be undertaken by private citizens. (See page 278 below.)

Judge Nott's opposition is based on the following grounds:

1. That it would be "illogical" to establish the office of Public Defender, because the State would be in a position of asserting its belief in the defendant's guilt and also asserting its belief as to the defendant's innocence.

2. That a "new great political office" would be created, and that "certain grave dangers might occur" through the clashing ambitions of a political District Attorney and political Public Defender belonging to opposite political parties, as well as by a combination between them, if members of the same party.

3. That the District Attorney would then endeavor to "secure the largest number of convictions possible against the Public Defender, while the Public Defender would endeavor at all costs to reduce the number of convictions secured against his office and to show the largest number of acquittals possible."

Not one of these objections is sound in theory, nor based upon experience gained from the operation of the Public Defender's office in various American communities.

It is as much the function of the state to shield the innocent as to convict the guilty. The "presumption of innocence" requires the state to defend as well as to prosecute accused persons. A trial should be an impartial judicial inquiry. The accused and the accuser should have the same opportunity and resources to present their respective contentions. The greatest triumph of the judicial system would be to secure equal justice to all persons. What we are accustomed to regard in the present day as "crimes" or "public wrongs" and bear the stamp of public prosecution, are often in reality but "private wrongs" seeking a remedy through public sources.

The office of public defender should not be a "political office" any more than that of the district attorney. The fact that the latter office may have been used for political purposes, is unfortunate. The advocates of the public defender plan do not urge the establishment of another great "political" office. They do urge an efficient and economical administration of justice through the medium of an office, intended primarily for the securing of an actual "equality before the law" to all classes of accused persons.

It is difficult to understand how the establishment of a public defender would make the district attorney more ambitious to "secure convictions." The proper function of a district attorney is not to secure convictions, but to secure convictions of *guilty* persons, after a fair trial. Neither is it the province of a public defender to obtain the acquittal of guilty persons. The whole idea of combat in the trial of a case is fundamentally unsound. The ascertainment of the truth should be the principal consideration. The aim of both officials should be to harmonize their respective functions as much as possible in order to bring about a fair administration of the law, so that no innocent man may suffer or a guilty man escape. This is being actually demonstrated to be sound in Los Angeles and other cities and has the sanction of historical precedent in foreign countries.

Judge Nott's objection, that the public defender would endeavor to secure the largest number of acquittals possible, is somewhat inconsistent with his opinion contained in a letter to the Criminal Courts Committee of the New York County Lawyers' Association, several years ago, in which he said:

"If the public defender's office were well and honestly conducted, I think on the whole its clients would be better defended than indigent defendants

are now, and that a large number of perjured defenses would be eliminated and honest defenses or pleas of 'guilty' substituted, which would not only be conducive to good public morals, but would save much time and labor in the Courts, and would reduce the calendar."

While the "Voluntary Defenders' Committee" will doubtless minimize certain abuses with respect to assigned counsel, and may be regarded as a forward step, it will not solve the real problem. Accused persons, presumed to be innocent, are entitled to be properly defended. Philanthropy—though well-intentioned—is not a substitute for a fundamental right.

The state should shield those who need its protection. That duty should not devolve upon private citizens or be dependent upon voluntary subscriptions. Justice, not charity, is the urgent need.

MAYER C. GOLDMAN, *New York City.*

To Establish a State Bureau of Identification in California—(Assembly Bill No. 143). *An act creating a state bureau of criminal identification and investigation, providing for its organization and defining its powers and duties and making an appropriation to carry out the [provisions hereof, and repealing an act entitled "An act to create a state bureau of criminal identification, and providing for the appointment of a director of said bureau, defining his duties and qualifications and powers; providing for the appointment of a clerk of said bureau and fixing his qualifications; fixing compensation of said director and clerk, providing for the manner of paying the same and providing for the expense of conducting the office," approved March 20, 1905.]*

The people of the State of California do enact, as follows:

[SECTION 1. There is hereby created a state bureau of criminal identification and investigation.

SEC. 2. Within ten days after this act goes into effect, it will be the duty of the governor to appoint a board of managers of said bureau, consisting of three members; one of whom shall be a chief of police of an incorporated city within the State of California, and one to be a duly elected, qualified and acting sheriff of a county within said state, and one to be a duly elected, qualified and acting district attorney of a county within said state; one member of said board shall be appointed to hold office for the term of two years, one member shall be appointed to hold office for the term of three years, and one member to be appointed to hold office for the term of four years, and thereafter, all appointments shall be for the full term of four years; *provided, however*, that should the term of any such member of the said board expire as such chief of police, or such sheriff, or such district attorney, he shall cease to be a member of the said board; *and provided, further*, that the governor shall fill all vacancies created in said board by the appointment of the same kind of an officer as was his predecessor.

SEC. 3. It shall be the duty of said board of managers within ten days after its appointment to take absolute control and management of said bureau, to meet and organize by choosing one of their number to be president, to make and adopt such rules as are necessary for proper conduct of their business as such board of managers, to provide for the appointment of a superintendent and such other employees as may be required; said appointments to be made by the said board of managers from an eligible list provided for such purpose

by the civil service commission; also to provide equipment for said bureau, with necessary furniture, fixtures, apparatus, appurtenances, appliances and materials as are necessary for the collection, filing and preservation of all criminal records both as to identification and investigation of criminals and stolen, lost, found, pledged or pawned property.

SEC. 4. It shall be the duty of said board of managers to procure and file for record and report in their office, as far as such can be procured, all plates, photos, outline pictures, descriptions, information and measurements of all persons who have been or shall hereafter be convicted of felony, or imprisoned for violating any of the military, naval, or criminal laws of the United States of America, and of all well-known and habitual criminals from wherever procurable.

SEC. 5. It shall be the duty of said board of managers to file or cause to be filed all plates, photographs, outline pictures, measurements, information and description which shall be received by it by virtue of its office and it shall make a complete and systematic record and index of the same, providing thereby a method of convenience, consultation and comparison. It shall be the duty of said board of managers to furnish, upon application, all information pertaining to the identification of any person, or persons, a plate, photograph, outline picture, description, measurement, or any data of which person there is a record in its office. Such information shall be furnished to the United States officers or officers of other states or territories, or possession of the United States or peace officers of other countries duly authorized to receive the same, and all peace officers of the State of California, which application shall be in writing and accompanied by a certificate signed by the officer making such application, stating that the information applied for is necessary in the interest of the due administration of the laws, and not for the purpose of assisting a private citizen in carrying on his personal interests or in maliciously, or uselessly, harassing, degrading or humiliating any person or persons.

SEC. 6. In this bureau may be used the following systems of identification: the Bertillon, the finger print system and any system of measurement that may be adopted by law in the various penal institutions of the state. It shall be the duty of said board of managers to keep on file in its office a record consisting of duplicates of all measurements, processes, operations, signalletic cards, plates, photographs, outline pictures, measurements and descriptions of all persons confined in penal institutions of this state as far as possible, in accordance with whatever system or systems may be in vogue in this state.

SEC. 7. Suitable offices for the proper conduct of the bureau shall be provided for by the superintendent of capitol buildings and grounds.

SEC. 8. It is hereby made the duty of the sheriffs of the several counties of the State of California, the chiefs of police of incorporated cities therein and marshals of incorporated cities and towns therein to furnish to the said bureau daily copies of finger prints on standardized eight by eight inch cards, and descriptions of all such persons arrested who in the best judgment of such sheriffs, chiefs of police, or city marshals are persons wanted for serious crimes, or are fugitives from justice, of all such persons in whose possession at the time of arrest are found goods or property reasonably believed by such sheriffs, chiefs of police or city marshals to have been stolen by them; or of all such persons in whose possession are found burglar outfits or burglar tools or burg-

lar keys or who have in their possession high power explosives reasonably believed to be used for unlawful purposes or who are in possession of infernal machines, bombs or other contrivances in whole or in part and reasonably believed by said sheriffs, chiefs of police and city marshals to be used for unlawful purposes, or of all persons who carry concealed firearms or other deadly weapons and reasonably believed to be carried for unlawful purposes, or who have in their possession inks, dye, paper or other articles necessary in the making of counterfeit bank notes, or in the alteration of bank notes; or dies, molds or other articles necessary in the making of counterfeit money, and reasonably believed to be used by them for such unlawful purposes. This section is by no means intended to include violators of city or county ordinances or of persons arrested for other trifling offenses. It is further made the duty of the aforesaid sheriffs, chiefs of police or city marshals to furnish said bureau daily reports of lost, stolen, found, pledged or pawned property received into their respective offices.

SEC. 9. In order to assist in the recovery of said property and in the arrest and prosecution of criminals, it is hereby made the duty of the said board of managers of said bureau to keep a complete record of all reports filed with the said bureau, of all personal property stolen, lost, found, pledged, or pawned in any city or county of this state.

SEC. 10. To provide for the installation of a proper system, and file, and cause to be filed therein cards containing an outline of the method of operation employed by criminals in the commission of crime.

SEC. 11. The board of managers of this bureau, shall serve without compensation; *provided, however*, that they shall receive their necessary traveling expenses while attending meetings of said board. The superintendent shall receive a salary of two thousand four hundred dollars per annum; the salaries of the other employees shall be fixed by the board of managers, subject to the approval of the board of control. The superintendent and the other employees shall be paid in the same manner and out of the same fund as the state officers are paid.

SEC. 12. There is hereby appropriated out of any money in the state treasury, not otherwise appropriated, the sum of thirty-six thousand dollars, or so much thereof as may be necessary, to be used by said board of managers in furnishing, equipping and maintaining the said bureau in accordance with the provisions of this act, and for the payment of the salaries herein provided for, for the fiscal year ending June thirtieth, one thousand nine hundred eighteen, and the fiscal year ending June thirtieth, one thousand nine hundred nineteen.

SEC. 13. The state controller is hereby directed to draw warrants in favor of the said board of managers at such times and such amounts as shall be approved by the state board of control, and the state treasurer is hereby directed to pay the same.

SEC. 14. All furniture, equipment and records now on file and in use in the office of the "bureau of criminal identification of the State of California," shall become a part of the furniture, equipment, and records of the "state bureau of criminal identification and investigation," immediately upon the organization of the board of managers as provided for in this act.

SEC. 15. An act entitled, "An act to create a state bureau of criminal

identification, and providing for the appointment of a director of said bureau, defining his duties and qualifications and powers; providing for the appointment of a clerk of said bureau and fixing his qualifications; fixing compensation of said director and clerk, providing for the manner of paying the same and providing for the expense of conducting the office"; approved March 20, 1905, is hereby repealed and all other acts and parts of acts in conflict herewith are hereby repealed.]

The Voluntary Defenders Committee.—To provide counsel for needy defendants in criminal cases in New York.

1. Purpose.—To employ a staff of attorneys and investigators who will offer their services to the criminal courts in cases where the law provides for the assignment of counsel to the defendant; who will undertake the voluntary defense of needy and deserving persons accused of crime; and who will assist others engaged in like efforts.

2. The Field.—In theory the law provides for the defense of every man accused of crime. If, when he comes up to plead to an indictment, he has no lawyer and desires one, the court is required to assign counsel to defend him—without pay, except in cases where the charge is murder in the first degree. If he pleads guilty, a probation officer is delegated to ascertain facts which will assist the court in determining the proper punishment. So far as the statutes are concerned, the poor man and the rich are equal in the eyes of the law.

In practice, the theory does not work out. The law can provide for the assignment of counsel, but can not provide counsel to be assigned. The probation officer may do his best; but he is an investigator, not an advocate. The prisoner, having admitted his guilt, overawed perhaps and disheartened, as often as not foreign born and speaking no English, can seldom adequately present his own cause to an officer of the law. He needs some one to urge it for him. In the daily grind of cases through the criminal courts, it is seldom that the poor man gets a thoroughgoing defense.

3. Why the Courts Find it Hard to Assign Competent Counsel.—Most lawyers in civil practice have neither the experience nor the equipment to handle properly a criminal case. There is required both knowledge of the types of human nature involved and judgment as what the criminal courts and juries will do; as to whether, for example, it is best to defend, to plead guilty and trust to mercy, or to go to the district attorney, present the defendant's case and ask for his discharge. The essential facts, both as to the crime charged and the life and surroundings of the man accused, have to be dug out with great difficulty;—often from most unpleasant soil. This requires trained investigators who "know the town" and the "underworld." Few lawyers have such assistants at their command; few are willing or able themselves to rummage the unpleasant places for facts and witnesses. Not only because he is very loath to undertake the task, but because he cannot properly cope with it, the civil lawyer is practically exempt from such assignment.

Practitioners at the criminal bar of the type that a court likes to trust are unfortunately few in proportion to the number of cases to be assigned. In 1915, in New York County, counsel were assigned to 1,495 persons charged with felony. The defense of a criminal is a laborious and expensive task. Naturally the courts hesitate to impose too much voluntary service on the few

available men; and naturally they in turn are reluctant to accept more than a few assignments.

The average person has scant idea of the responsibility involved or of the cost, in money, time and toil, of adequately representing a defendant in a criminal proceeding. Often the very soul of a man is at stake. He may, by conscientious and painstaking effort, be saved not only from jail but from himself and for society. He may, because of his lawyer's carelessness or lack of resources, ability, vision or conscience, be turned into a criminal for life.

4. What Actually Happens.—A small group of a dozen or so lawyers make a profession of handling assigned cases. They sit each morning in a conspicuous place in Part I of the Court of General Sessions where assignments are made. Usually it is only some member of this volunteer band who is available to a perplexed judge when he must assign counsel.

For the most part, these lawyers do their work "according to their lights." Occasionally there develops among them a "shyster," who makes use of his assignment to extract cash from relatives or friends of the accused by means of dire tales of what will happen if money is not forthcoming to buy off witnesses, corrupt high personages, or what not. The judges, however, are on the alert to stop such practices and it is doubtful if the darker stories as to the evils of assigned counsel are true except in rare instances.

A real evil, nevertheless, is involved in a system which makes it necessary to assign cases to a man of this type. As a rule he has no facilities to do the work. He has no assistants or investigators, sometimes not even an office. He haunts the criminal courts by day, and at night plods around in the weary task of seeking witnesses. He has no easy time picking up enough pay cases to eke out a living. The temptation to try to get some money for his supposedly gratuitous services out of the defendant or his family or friends is enormous. A stimulus to do good work of course exists in the possibility that the news that he has been able to get a man off may spread and bring him a paying client. In a hard case, however, where the prospects of acquittal are slight, and the defendant is friendless, it is only too easy to shirk the work, to urge the defendant to plead guilty as a bargain for a light sentence or, if he will not, to give him only a perfunctory defense.

The whole situation was once graphically summarized by one of these practitioners in a frank appeal to the jury. "This man," he urged, "has no lawyer. I am only assigned counsel. I get no pay. My only reward is in heaven and how can I ever get there!"

To a man who takes assignments only in the hope that by now and then being able to "beat the case" he may fall into something remunerative, the opportunity for real service to the individual and to the community is not even apparent. To that community which is perforce in the city prison, the daily dreary sight of these men, working for nothing only because they are too unsuccessful to work, except infrequently, for something, is not exactly suggestive of high ideals of justice. No wonder the first offender, looking back upon his offense through such an atmosphere, gets a distorted idea of the administration of the criminal law and sees it only as an enemy to be beaten.

What, most of all, a guilty defendant really needs is the advice of a high-minded lawyer. He may well be saved from a life of crime by clear-sighted counsel or plunged into it by sordid and selfish advice. The number of second offenders is increasing with appalling rapidity. In 1906 in New York County,

out of 2,543 convictions under indictments, 648, or 21%, were second offenders. In 1915 out of 3,728 convicted, 1,328, or 35%, were second offenders. Men who have been imprisoned in and spoken from the Tombs have asserted, and there is much to support their views, that second offenders are bred by criminal practitioners whose chief aim in defending a case is to get the defendant off at any price. Of the 3,728 persons convicted after indictment for felony in 1915, 2,737 were between 15 and 30 years of age; over a thousand being between 15 and 20. Certainly every effort should be made to make it possible in all cases of young persons charged with serious crime to assign counsel who can be counted on to strive for something better than merely to "beat the case," whatever the means employed or whatever the guilt of the defendant.

5. *How the Poor Man Is Sentenced.*—Fully as unsatisfactory are the available means for ascertaining what should be done when a needy defendant pleads guilty upon arraignment. The court may talk with the complaining witness and the officer and then proceed to sentence. The usual practice is to assign a probation officer to investigate. Theoretically, a probation officer is a custodian under whose care a convict may be paroled. Practically, a large part, if not most of the time of the probation officer in general sessions, is taken up in trying to find facts on the basis of which the judge can impose a proper sentence. This confusion of functions makes a real probation system very difficult to operate. About 50% of persons indicted are foreigners, many of them can speak no English. Upon pleading guilty such a man is confined in jail. In any event, he is most likely uncommunicative and fearful in the presence of a court officer. If he had a lawyer who would take up the cudgels for him it would be different. To get back into his life and surroundings, to discount the tales of his enemies, locate the causes of his downfall—this is no easy task and the probation officer, strive as he may, with the number of cases assigned to him, cannot adequately fulfill it. If a convicted youth comes of a family of means, the most skilled lawyer is hired to present all the facts which may show that to release him might save him from a life of crime. Except for what the probation officer may discover, the poor boy, as a rule, comes unbefriended and with no one to speak for him, to his day of judgment.

6. *Previous Attempts to Meet the Need.*—Various plans have been tried and failed. A well-organized movement a few years ago resulted in presenting to the criminal court judges a list of fine spirited young lawyers who volunteered to take assignments. Most of them took one or two; and never wanted another and were not urged! Individual judges have made brave efforts to draft well-known lawyers, only to give it up, a little later, discouraged. The Legal Aid Society takes such criminal cases as come to it, but its staff is far too busy with handling over 40,000 civil cases a year to take assignments in the criminal courts. The plan which has emerged from experience as most responsive to the need is not easily adaptable to, and runs counter to some of the necessary principles of that society's other work. There has been some agitation for a public defender, but the idea has found little favor for reasons not necessary to elaborate here. The recommendation of the investigating committees of the Lawyers and Bar Associations is to the effect that the need should be met not by the creation of one public office to contest with another, the one representing the state and the other the individual, but by volunteer effort.

7. *The Plan of This Committee.*—Simply stated, it is to employ, pay and

direct the efforts of counsel who will volunteer to take assignments to defend the accused and to represent before sentence those who have pleaded guilty. They will serve on a salary basis and receive no other compensation and do no other work. They will be equipped with an office, have the services of at least three trained investigators, one of them a woman, who will be selected in part for their ability to speak several of the foreign languages which are encountered. It is planned to make this staff the active center of a large association of volunteer workers. There are many lawyers, both men and women, who are ready to volunteer for work in the criminal courts under the advice and with the assistance of the committee's staff. Several physicians have offered to give their services when called upon. The governor, the district attorney and the judges have become interested in the plan and welcome its opportunities. There will be, when it is carried out, no further need for assigning incompetent lawyers or professional assignment chasers.

8. The Crucial Question—Competent Attorneys.—The success of the whole plan depends on getting the right men as the salaried attorneys. Highly paid and experienced lawyers are engaged as district attorneys to prosecute. To pit against them young, inexperienced or unsuccessful practitioners would be to defeat the undertaking at the very outset. The voluntary defender should be not only a man of the highest character and of fine insight and sympathy; he should know the whole game and be capable of going into a hard-fought trial against the best of assistant district attorneys. Any effort to go at the matter with inadequate resources and cheap or underpaid counsel would be foredoomed to failure.

9. The Answer.—The committee is fortunate in having met its most difficult problem. William Dean Embree, now assistant district attorney in New York County, has expressed his willingness to act as chief attorney. He has served with eminent success and ever-increasing ability and reputation under District Attorneys Jerome, Whitman, Perkins and Swann. No one better fitted, both in character and ability, to undertake the task could be selected. Associated with Mr. Embree will be Timothy Newell Pfeiffer, who was a deputy assistant district attorney under District Attorneys Whitman and Perkins, and who is now the attorney for the American Social Hygiene Association. Both these men are thoroughly imbued with the spirit of the undertaking and see very clearly the opportunities it offers for effective service to the community.

10. The Dangers and Problems to Be Met.—The Scylla of this enterprise is that it may be utilized by unworthy persons as a means of getting highly competent legal services for nothing. The Charybdis is that in many assigned cases the defendant will be a "crook" who wants no honest defense, but only to be kept out of jail by crooked ways. The course between these two dangers will have to be felt out in detail as the work progresses. It can only be roughly charted now.

The chief source of work will be assignments by the court. At the outset it is not planned to take up cases on the application of the person accused. The committee's services, however, will be offered, so far as possible, to other institutions and volunteer workers who are interested in defendants and will vouch for the worthiness of the case.

Of course, in assigned cases, there will be instances where it will prove that the defendant is well able to employ counsel and is not worthy of volun-

tary assistance. The remedy will be to apply to the court to revoke the assignment. This can easily be done in a way that will not prejudice the defendant.

When a voluntary defender finds that he has a guilty man on his hands he will not set out to acquit him. He will boldly face the problem of the defendant's future career. The first essential step towards improvement is a confession of guilt. If the defendant refuses the advice, the voluntary defender may ask to be relieved from the assignment. Usually the defendant will himself be prompt to find means to accomplish such a result. If the assignment must perforce continue, then the voluntary defender has it in his power to insist on legal proof of the defendant's guilt and to keep him and his witnesses from committing perjury on the stand. The really difficult case will be where guilt is apparent but stoutly denied, even to counsel. In such event the answer will have to be sought in the good judgment of the salaried counsel and the officers of the committee as applied to the peculiar circumstances of each case as it arises.

11. How the Plan Is Being Financed.—The problems of putting this work on a successful and useful basis should not be complicated by a constant need for funds. Consequently, before starting, the committee aims to provide to meet its budget for three years. An appeal is being made now to relatively few individuals for assurances of support during that period. When the enterprise has become established it is planned to put it on a permanent basis of a broad general appeal; the work being one which ought to be supported ultimately through a wide public interest rather than by the generosity of a few. The committee will at that time probably resolve itself into some form of association with a large sustaining membership.

12. The Committee.—The committee in charge of the plan has among its members several men who have been assistant district attorneys in New York County and many others who, in one way or another, have had some practical experience with the problems involved. Its membership is as follows:

Nathan A. Smyth, Chairman	Raymond B. Fosdick
James Bronson Reynolds, Chairman	Alexander M. Hadden
Executive Board	Mrs. Learned Hand
Richard M. Hurd, Treasurer	Charles E. Hughes, Jr.
Timothy N. Pfeiffer, Secretary	Walter S. Kaufmann
Mrs. Francis McN. Bacon	Sam A. Lewisohn
George Gordon Battle	Philip J. McCook
Mrs. Francis H. Cabot	Robert McC. Marsh
John Kirkland Clark	Stephen H. Philbin
George Brokaw Compton	Eustace Seligman
Robert J. Eidlitz	Arthur Woods
William Dean Embree.	

The Minnesota Legislature and Child Welfare.—Of the forty-three measures recommended by the Child Welfare Commission thirty-five have been passed by the Legislature with but few unimportant changes.

The joint committee of the House and Senate to which was referred this proposed body of law, recommended for passage all but two bills. As numbered in the printed report these bills are numbers 10 and 37. The substance of bill number ten, relating to the making of a single act of sexual intercourse a felony, was covered by another bill which has passed the Senate, but not, as

yet, the House. Bill number 37 relates to a minimum of supervision by the State Department of Education over private and parochial schools in the matter of teaching English and as to records of truancy. This bill was vigorously opposed by many sincere people and it was deemed wise to discuss it more in detail before asking its passage.

There were then 41 bills before the Legislature recommended by the Commission and by the Joint Legislative Committee. For unavoidable reasons these measures were presented later in the session than had been anticipated and it was readily apparent that something must be sacrificed if the fundamental scheme to promote child welfare was to succeed. Consequently, six measures were temporarily withdrawn from the remainder. The bills withdrawn are, as numbered in the printed report, number 5, relating to the regulation of marriage; numbers 12 and 13, relating to the inheritance of illegitimate children; number 33, a revision of the child labor law; number 34, regulating street trades (a bill which was bitterly opposed by the newspapers and because of which the newspapers in the three large cities unitedly refused to give any substantial editorial comment on that or any other proposals of the Commission), and bill number 29, relating to the tenure of office of the board of women visitors which was met by another bill.

What has been gained by the passage of these new laws? The answer can, of course, be given with more accuracy and better grace after they have been tested in operation. But the outlines are clear. There has been created as a bureau of the Board of Control a regularly organized state agency charged with the fulfillment of the state's obligation to all children in need of care and guardianship, with special reference to the illegitimate child. The laws relating to illegitimacy have been revised and the father of a child born out of wedlock is subject to the same degree of responsibility as though the child were legitimate. Supplementary to this it has been made a felony to abscond where issue is born of fornication. Safeguards have been thrown about the adoption and placing out of children, lying-in hospitals must now be properly licensed and subjected to wise regulation. The law relating to abandonment and non-support has been revised and strengthened. The so called mothers' pension law was re-written, its provisions enlarged and standards of administration established in the light of the experience of our own and other states. The juvenile court law has likewise undergone a thorough process of recasting at the hands of persons intimately acquainted with juvenile court problems. The scope of the law, the machinery of its procedure and the spirit of its text have been put on a sound and liberal foundation.

This is but a flashlight upon the statutes enacted, there are many more and there is much more of importance that might be said about them.

In conclusion it should be noted that the State Legislature treated the whole subject with patience and friendly consideration. To Representative Sherman Childs of the House and Senator Oluf Gjerset of the Senate especial credit is due for their efforts in behalf of this legislation. They have rendered invaluable assistance. The people of the state by financial aid, active work and vital interest have made it possible for Minnesota to have as soundly progressive laws relating to children as will be found on the statute books of any state in the Union.—W. W. HOBSON, Executive Secretary of Commission.

Children in Industry and the Street Trades.—In the Juvenile Protective

Association of Chicago, there is a department dealing with occupations of children and young people. Since the last annual report, compiled October 1915, 598 complaints have come to this department. These complaints fall into two groups: first, a comparatively small number of cases which came to our notice of children and young girls employed under prohibited conditions in industry; second, a large number of cases of children found in street trades.

Factory Cases.—The number of industrial complaints is naturally small, such complaints usually going directly to the Factory Inspection Department. Those which come to us are transferred to that department and followed up to insure action. "Billy" Thompson, booker of children in "Walkin' the Dog" contests, was prosecuted at the instigation of the Juvenile Protective Association and fined \$50 and costs. The Factory Inspection Department secured the conviction of Mrs. Wilson, mother of "Babe" Wilson, a Chicago child who has been on the stage in our neighborhood theatres since her sixth year. Owing to our activity in trying to secure evidence on which to base a prosecution, Mrs. Wilson took "Babe" out of school last year and enrolled her in the Junior Follies of 1916 company, which has been traveling the country ever since. Judging by letters which we have on file, the Junior Follies of 1916 company is no place in which to bring up a child. The Juvenile Protective Association has kept on the case and is gratified at the conviction reported above. It is the result—as far as we know—of the first prosecution under that clause of the Child Labor Law which holds parents liable for work done in violation of its rules by their children. A few convictions under this clause would, we believe, go far toward putting a stop to this serious kind of exploitation of children by their parents.

In the Heineman cases, the Factory Department having invited co-operation, the Juvenile Protective Association was able to offer its own attorney for the prosecution. The Heineman cases are the first serious attempt to enforce that clause of the Child Labor Law which forbids the employment of girls under sixteen at any process which compels them to stand constantly. Our Child Labor law is now about fourteen years old. It is time we learned whether vital parts of it, hitherto apparently considered too weak to use, or their use premature, can be legally made to work.

Street Trades.—Since its last annual report, the Juvenile Protective Association has recorded 507 street trades cases. These, again, fall into two groups: a small group of begging children (85), and a large group of children who peddle. Three hundred and seventy-seven of the latter sold newspapers. Probably the begging list would be longer and the peddling list not so long, if peddling were not often made a cloak for begging.

Begging.—Most of our begging children are not money beggars—they are the bag and basket children who invade the wholesale provision markets, and who may be found at night sidling into restaurants and bakeries, looking for damaged fruit, sick chickens, and stale bread. But while there are not many children who beg for money, the success of a few does little credit to the public intelligence. Arthur B— was brought into the Juvenile Protective Association office one Friday afternoon with \$9.83 which he had begged from loop business men. Investigation showed that Arthur had been absent from school 55 half days on Friday on the plea that he "had to get bread for his family." It also showed that the father is a young and able-bodied teamster

and that the grandmother owns two good houses, in one of which the B— family lives.

Peddling vs. Begging.—Next to Arthur B—, Katie K— is the most successful beggar on our records. Her case is one of those illustrating the close connection existing between begging and peddling. One snowy day Katie was found selling gum on Michigan Avenue. She offered each package with the sad tale that her father had been unemployed for five months and that there were five younger children at home. Investigation showed that the father had been injured in a work accident, but that he had returned to work and had received his full wages for the time of his absence—about \$400—three days before Katie stood on the corner peddling gum and her sad story. Several times she has been found peddling articles bought with money previously “asked from kind ladies.” Katie is a child of exceptional intelligence and charm, and it would pay the community to take good care of her. Instead, the public humors her begging adventures. But Mary P—, a pretty girl of twelve who has accompanied Katie on some of these ventures, was found recently in a department store with a suitcase full of stolen goods. It is perhaps a shorter step than we realize from the trickery of habitual begging to stealing.

Newsboys.—As our list of 377 news vendors includes 337 boys and only 40 girls, it will be seen that the problem here is almost entirely that of the newsboy. One hundred and thirty-seven of our 337 newsboy cases were found selling papers at night. Sixty-seven of these were found in the news alleys. Some of the latter “hustled” papers regularly until 1 and 2 A. M. Besides these, we have found little boys “hustling” papers at 8:30 and 9 P. M. who also sell papers every day after school and who sometimes put in 8 or 10 hours selling papers on Saturday. These children, ranging in age from 8 to 13 years, spend more of their time selling papers than they do in school. The present street trades laws permit boys under 14 to sell papers until 8 P. M. Over half the year, in Chicago, it is dark by 6 P. M. By 7 o'clock the streets are deserted. The older newsboys and standmen—like all other workers—have gone home to their evening meal. Only the small boy is left “tending stand,” a forlorn picture of exploited childhood. These small newsboys either get a very late supper at home, or they buy a meal at a lunch counter or get a saloon free lunch. Irregular eating and ill-chosen food are two of the bad conditions incident to the life of the young newsboy which undoubtedly have a deteriorating physical effect on the boy who habitually sells papers.

The boy who eats a late evening meal away from home is so far removed from parental control that his evening occupations and bedtime are left to his own discretion. Besides, the average newsboy has the added temptation of an unknown sum of money in his hands which he may spend for various amusements. Thus the boy who sells papers up to 8 P. M. becomes to a large extent the master of his time, his nourishment, his recreation and his whereabouts. With a child's judgment, he assumes in his own case the responsibilities of an adult. The results of this dangerous degree of freedom are reflected to some extent in the school and delinquency records of these children.

Effect of Selling Papers on School Work.—In 176 cases, the Juvenile Protective Association has inquired into the effect of selling papers on the school records of the children. Placing the benefit of every doubt to the credit of the child's school work, 81 of the 176 records secured were classed as satisfactory. Forty showed clearly that the child was below grade; 48 showed poor attend-

ance, 23 of these being listed as truants. Besides the 40 children found below grade, 37 showed poor scholarship in their grade, and 31 showed bad behavior, 5 of the latter being enrolled in rooms for incorrigibles. Two had been excluded from school as impossible to manage.

Newsboys as Delinquents.—Of our 337 newsboy cases, 15 already had Juvenile Court records for delinquency. Twenty-one more were runaways from home—a form of delinquency. In addition there were the 23 truants, 7 of whom—as runaways—were also delinquent. The other 16 truants, the boy found plating pennies in newsboys alley to pass on to his customers as nickels, and the two boys found “rolling a drunk”—i. e., picking the pockets of a man in a drunken stupor—while likely candidates for the delinquent list, are not included in our count. Without them the proportion of delinquents among the newsboys on our list is 12.7 per cent.

Why Newsboys?—This question is not intended to cover the reason for the sale of papers by minors in all cases, but—in view of the conditions dangerous to child life which the newsboy inevitably encounters—the persistence of widespread violation of the street trades laws enacted to decrease the number and activities of newsboys.

One reason is that the newsboy's occupation, *per se*, is not a serious disturbance of the public peace. Therefore, it does not disturb the police, who are charged with the enforcement of the laws regulating it. But the chief bar to enforcement seems to be the conviction that most of these boys come of very poor families and must be allowed to earn money in any way they can in order to keep themselves and their people from starving. It is essential, therefore, that the Juvenile Protective Association should emphasize the fact that in the great majority of cases there was no urgent need in the families of the boys found selling papers. The economic status of the family was investigated in 203 cases. In only 49 of these was family need justifiably the motive for the child's selling papers, as against 154 cases in which there was no family need. In one of the 49 needy cases the need was only temporary; in another case the need was far better relieved by securing a paying scholarship for the child in a trade school; in two others, the mother was assisted in getting a widow's pension; in three others, the boys might have had day jobs instead of selling papers at night. Five newsboys of needy families brought home only a few pennies a day. Four cases were referred to the Charities.

Most of the children selling papers do so because they have nothing else to do outside of school hours. Parents of many nationalities, who have admitted that they had no need of the money brought in, have insisted that the father's news stand served as a hitching post to which to tether the boy who would otherwise have run wild; while others have said that the responsibility of having a few papers to “hustle” would keep their boy from fighting and other mischief. The great majority of newsboys, even those whose families have no urgent need of their earnings, come from crowded neighborhoods containing many destructive and few constructive influences. This being the case, it seems only just, in connection with a plea for better enforcement of street trades regulations, and for more adequate regulations, to consider what must be done to insure better supervision of the boys' time when they shall be prevented from selling papers.

Constructive Influences.—Strongly suggestive of the solution to the problem of what to do with the newsboy outside of regular school hours, are

the 275 school buildings, which—in spite of social centers conducted in 36 of them during two evenings a week last winter—still stand idle the greater part of the time. Last winter a woman's club kept "open house" in one school building in a congested district from which many street trading children come. These children were kept busy, happy, and developing in a normal way, through the activities carried on in this school between the close of the regular period and the supper hour, at a cost of two and one-third cents per child per day. The opening up of every public school in every congested district of the city is needed in order to give the newsboy a better alternative to working the streets than running the streets idle. Meanwhile, the public is urged to co-operate with the Juvenile Protective Association by reporting cases of apparent violation of the street trades law, in order that repeated demonstration of the needlessness and the harm of street trading for children may finally arouse the police department, the only agency really able to protect the children of the city from these evils.—Elsa Wertheim, in Fifteenth Annual Report of the Juvenile Protective Association of Chicago.

JUVENILE DELINQUENCY

The War and Juvenile Delinquency.—In this JOURNAL of March, 1917, page 925, the following paragraph appeared:

"In comparing the three months ending February 29, 1916, with the corresponding period twelve months earlier, it was found that in London the number of juveniles charged with punishable offenses had increased from 1,304 to 2,005, in Liverpool from 578 to 702 and in Birmingham from 248 to 402. This return applied to children less than 16 years old. And the preceding year, 1915, also was an abnormal year of war, whose figures were above those for 1914.—*London Times*. Nov. 8, 1916."

That a similar situation exists in Canada is shown by the following statement from the Annual Report for 1916 on Dependent and Delinquent Children of the Province of Alberta¹:

"During the year 1916, 520 boys were tried in the Juvenile Courts of this Province for various offenses, some of them apparently trifling and some very serious. Youths frequently commit crimes against persons and property with a deliberation and a coolness hardly excelled by the habitual criminal. Our statistics show an increase of 25 per cent over the preceding year. In this connection it may be noted that the abnormal times in which we live have made more acute the problem of juvenile delinquency. * * * Reports to hand indicate that there have been increases in practically every part of the world. The causes for this may be summed up as follows: First, the decrease in parental control owing to the absence of so many fathers; second, the fact that many of the male teachers for whom the boys had the greatest respect, have joined the forces, and as a consequence little individual attention can be given; third, the spirit of adventure is in the air, children hear from their friends and relatives thrilling accounts of trench warfare and other excitements, and their love for imitation leads them into many offenses."

In the Cook County (Chicago) Juvenile Court there were 196 petitions for delinquent children filed May, 1916, and 303 in May, 1917.

The only reason that can be given for this large increase is the excitement

¹A. M. McDonald, Supt., Edmonton, Alberta.

and restlessness prevalent since the beginning of the war. In Chicago industrial conditions are excellent. A job can be obtained by almost any boy. The schools are in their usual condition. The boy scouts and other boys' and girls' organizations are more active than usual. Taking these things in consideration and the fact that very few of the delinquent children come from families from which some one has left because of the war, the conclusion is inevitable that the spirit of restlessness abroad is the main—if not the only—reason for the increase. It should be added that in April, 1917, there were 232 delinquent petitions filed—showing almost as large an increase from April, 1917, to May, 1917, as from May, 1916, to May, 1917.

JOEL D. HUNTER, *Chicago.*

POLICE

The Fingerprint Method for the American Police Systems.—I visited the Bureau de l'Identité Judiciaire in Paris in order to see the workings of the Department and in order to discover if there was anything which could be used for the benefit of America.

In this Note I shall not describe the Anthropometric System as it is in operation in Paris. That system has been often described and Americans are pretty well theoretically acquainted with it. But as a matter of practice, Americans are not so well acquainted with it as they ought to be. If the whole truth were known and impressed, a great many mistakes now being made where the Anthropometric System is being installed, would be obviated.

I do not agree with all the criticisms that have been directed against the system. The first objection is a valid objection. It is that the Anthropometric System cannot be applied to women and children. A second objection is that the instruments can get out of order. This is perfectly true, and the charge would be a serious one against the system if there were no checking up. This method of checking up has not been given enough attention, especially in some of the writings which I have seen in America. The implication has been that only one individual took the measurements so that, if the instruments happened to be out of order at the time, the measurements would be incorrect. But in Paris there is a checking-up system which makes it less possible for errors to creep in. Each measurement is taken by two individuals independently of each other. These measurements are compared, and if there is any discrepancy, the measuring is done again. In the Bureau in Paris there are four individuals who are taking measurements, and four individuals who are writing down the results. The real charge concerning the getting out of order of the instruments is this: that two instruments brought into use at the same time may, for similar causes, get out of order at about the same time, and then the checking-up system will be a farce. The instruments will tally. When the measurements are taken of the same individual after an interval of time, with different instruments, those instruments may be entirely different ones, may be in good order, and may give entirely different results.

The Anthropometric System, it is said, can be used only by trained and skilled men. This is, to a certain extent, true. But I was surprised, during my visit to the Bureau, to see how easily accurate measurements can be taken even by persons who have had a very short experience. I was assured by persons in the Department that the individuals who were then taking measurements were individuals who had replaced the skilled persons who were in the

Bureau at the beginning of the war, and that these individuals had become perfect in the art at the end of three weeks. This seems to me to be an exaggeration, and even if it chimed with the truth it would be an objection against the system which, for America, is something to be considered. We have a large number of Bureaus in our country and the number of men who could do that is very small. Mistakes are so easily made and they are so important when they are made, that there is no reason why, if we can use another system, we should use a system which is subject to such grave results.

Another objection which can be brought against the system—and this I believe to be an even graver objection for America than the objections which I have already indicated—is the difficulty of classification. If the work of measuring requires skill and training, the work of classification requires mastery of a very difficult art. We have very few people in America, just as they have very few people in France or elsewhere, who could do the work of the numerous Bureaus which we have scattered all over the United States, and this would make the introduction of the system almost an impossible task.

So far as the identifying of an individual is concerned, after the classification has been made and when he has been measured a second time—this is comparatively easy. At the Paris Bureau the work is done in a very rapid fashion. In several instances I selected cards and asked that the cards be located. The individuals were identified almost immediately. It is wrong to say that it takes a much longer time than the identifying of an individual by means of the fingerprint system. It all depends upon who does the work and how well done the classification is. A classification that is perfected on the principles of the classification in Paris, which restricts the individual you are trying to identify within very narrow limits, is a work which is childish in its simplicity, and which can be very rapidly done. As I say, it is the working out of the classification which makes the possibility of quick search.

It is thought in America that the Anthropometric System is the only system in operation in Paris. This is not so. Of course, the anthropometric measurements are taken, but these measurements have to be taken, inasmuch as, if the fingerprint system were adopted as the only system, there would be no possibility of identifying criminals who have already appeared in the Bureau. As a matter of absolute necessity, in order to identify criminals whose record the Bureau has, the Bureau keeps on taking anthropometric measurements. The taking of measurements would be a waste of time and a waste of money for us, but we must recognize the historic circumstances and understand that a new system—the fingerprint system—side by side with this old system, is now in operation and will be continued, which will probably supplant the anthropometric system entirely. I discussed the advantages and the disadvantages of the two systems with officers in the Bureau, and I finally got the admission that the Bureau would probably in the end adopt simply the fingerprint system. In about twenty years the criminals whose records are in the anthropometric bureau will be dead, and then the whole measurement system may be dropped. Fingerprints are being taken of criminals and placed upon the same card with the anthropometric measurements.

The fingerprint system should be the only system adopted in America. It has a great many advantages which are not at all shared by the other system, which American Bureaus seem to be very fond of. In the hurry to be in the

fashion and in the rage of extravagance which is so natural to us, we have been installing Bureaus based on the Anthropometric System without knowing how to manage them at all, and without knowing the consequences of the installation. We have been losing opportunities. It is time that the extravagance were halted, and that a better system were put into operation, which would save time and money and would ensure accuracy. The fingerprint system is simple. It takes a very short time to take prints; anybody can take them; it does not require trained individuals; there is no possibility of error; the prints speak for themselves; human fallibility does not play any part in the work of taking the prints; the classification is simpler than the classification under the Anthropometric System and facilitates the search for the identity of the individuals. In addition to all these advantages, it has the almost inestimable advantage of making it possible to identify a criminal before he has been caught, if that criminal has a record. Criminals are very often caught in Europe, and have been caught in the City of New York through the fact that the fingerprint system was in operation, and that the perpetrator of a crime had a criminal record and left his traces at the scene of the crime.

I visited the Photographic Department also, and was treated to a view of the most elaborate tattooing that I have even seen. The case was so interesting that the Photographic Department took the picture of the individual concerned stripped. He was tattooed all over with the most elaborate and most beautiful designs, which would have made Lombroso leap with joy and which Havelock Ellis would have added to his collection, as gems. I am seeking to get a collection of photographs of tattooed criminals for America.

ROBERT FERRARI.

PROBATION

Report of Massachusetts Commission on Probation.¹—The Eighth Annual Report of the Massachusetts Commission on Probation is filled with excellent material. It should be in the hands of all who have the responsibility of directing probation work. The report calls attention to the following:

- (1) That probation rests in the first place upon the idea that it has to deal with normal persons who have committed offenses but who have not become hardened offenders or impervious to appeals to their better selves.
- (2) That the increase in the number placed in probation each year from 1909 to 1916 is not due to a lax administration of criminal law but rather to
 - (a) The multiplication of laws establishing new offenses,
 - (b) Better enforcement of law by police authorities—hence more arrests,
 - (c) The fact that probation has by experience been shown to be the proper treatment for many individuals.
- (3) In 1916, 26.2 per cent of all offenders, or 28,953, were placed on probation. Of these 73 per cent were released with improvement.
- (4) In 1916, \$38,452.19 was collected by probation officers as restitution and reparation and \$303,009.01 from deserting husbands and fathers.
- (5) The problem of the delinquent defective will not be solved by probation and probationary methods.

¹Commission on Probation—Robert O. Harris, Chairman; John D. McLaughlin, William Sullivan, John Perrins, Jr., Charles M. Davenport; Herbert C. Parsons, Deputy Commissioner and Secretary.

(6) Probation officers should be appointed by judges and not by any commission.

JOEL D. HUNTER, *Chicago.*

Meeting of the National Probation Association.—The Family Court to take over the work of children's courts and so-called domestic relations courts, co-ordinating all investigations and probationary treatment of children and cases arising out of family difficulties, including non-support and divorce, was advocated in resolutions adopted by the National Probation Association at its ninth annual conference at Pittsburgh, June 5th to 7th. A report urging such a family court was presented by a special committee of the Association, which has been investigating the matter during the past year. Judge Charles W. Hoffman of the Court of Domestic Relations of Cincinnati is chairman of the Committee, which was continued to do active work during the coming year.

Judge Hoffman said in his report to the Association: "The unit of society is not the individual, but the family. The causes of juvenile delinquency, dependency of children, desertion and non-support, pauperism, alcoholism, divorce and marital dissensions are inter-related. All these in a measure can be traced to some defect in the family, and that defect in many instances is so obscure that current methods of dealing with domestic relations fail to reveal them. It is apparent that to deal with the family effectively, to relieve present distress and to ascertain causes of disruption of the family and the causes of anti-social conduct in general it is necessary that some court have power to deal with the family as a unit."

It was urged that the family court be under the direction of a single judge, who may in the large circuits assign the entire charge of certain classes of cases to specially qualified judges. The report recommends ample probation departments, with medical and psychological clinics attached.

The work of the Philadelphia Municipal Court was discussed in this connection by Mrs. Jane D. Rippin, Chief Probation Officer. This court is in many respects a family court. The evils of treating the parents and children in different courts with no interchange of records have been obviated to a large degree by the co-ordination of the court's work, especially of the probation department.

The Committee on Juvenile Courts reported through its chairman, Mr. Roger N. Baldwin, that the co-operation of the Federal Children's Bureau had been obtained for the making of a nation-wide study of the Juvenile Court in this country. This will comprise a field study and the findings will be published.

Departments of diagnosis in the courts employing physicians and psychologists to work in close co-operation with the probation officers were advocated by Dr. William Healy and Dr. Victor Anderson, both of Boston.

The need for detention homes for children removed from their surroundings or where children may be held for observation and investigation, established on the county plan, so that they may be available to rural districts, was emphasized, and the Association appointed a committee to deal with this matter during the coming year.

Adult responsibility in children's cases was discussed. Juvenile courts have not dealt adequately with parents and others responsible for delinquent or

neglected children. More power should be given to deal with adults through the children's court, and this power should be exercised.

A notable address was delivered by Judge Charles Brown of the Municipal Court of Philadelphia and by Hon. Edwin Mulready, Commissioner of Labor of Massachusetts, one of the pioneers in the development of adult probation work in this country.

The following officers were elected for the ensuing year: President, Mrs. Benjamin J. West, Chief of Probation Officer, Juvenile Court, Memphis; First Vice-President, John W. Houston, Chief Adult Probation Officer, Chicago; Second Vice-President, Judge Charles H. Hoffman of Cincinnati, Ohio; Third Vice-President, Herbert C. Parsons, Secretary of the Commission on Probation of Massachusetts; Secretary and Treasurer, Charles L. Chute of the State Probation Commission, Albany, New York.—CHARLES L. CHUTE, Secretary National Probation Association, Albany, N. Y.

MISCELLANEOUS.

Supplementary Announcement of Courses in Criminology.—Four courses in criminology will be offered by the School of Jurisprudence of the University of California during the coming summer session. The courses may all be taken together, or one or more may be elected. While all these courses may be carried on simultaneously a general university regulation limits to six units the credit that will be allowed for work done in any one summer session. Courses S113a and S113c are intended to cover a portion of an elementary course in criminology offering to lawyers, physicians, nurses, teachers, probation officers, civil service workers, police officers, officials in public institutions, and others interested in the serious study of crime and its prevention, an opportunity to become acquainted with the work of modern criminology. The subject will be covered for the most part by lectures and demonstrations. The prescribed reading will not be large in amount.

Courses S113b and S113d are primarily intended for those who are or expect to be engaged in work which involves the care of criminals and other delinquents.

S113a. MEDICAL AND PSYCHOLOGICAL PROBLEMS.

DR. HOAG.

An introduction to the study of the medical and psychological side of criminology, including mental disorders, feeble-mindedness, disease, heredity, juvenile crime, organization of departments for the study of criminals, lectures and assigned reading.

2 units. M., T., W., Th., F., 9:00. 106 B. H. L.

This course will include (outline as given in 1916 announcement).

S113b. PRACTICE WORK IN CRIMINOLOGY.

DR. HOAG.

Use of Binet and other intelligence tests, field investigation and reports in the study of selected delinquents.

2 units. M., T., W., Th., F., 10:00. 106 B. H. L.

In S113a and S113b Dr. Hoag will be assisted by special lecturers, including Orbison, Wood, Ball, Von Kleinschmidt.

S113c. THE INVESTIGATION OF CRIME.

EDWARD OSCAR HEINRICH.

Modes and procedure in use in the best criminal and legal practice for the detection, preservation, and ultimate presentation in court of facts essential to the solution of a criminal problem, and the identification and apprehension of criminals. Forgeries and other ques-

tioned documents, crime agencies, police systems, criminals, methods of operation. Lectures, exhibits, photographs, stereopticon views.

2 units. M., T., W., Th., F., 11:00. 106 B. H. L.

This course will include:

- A. Criminal Injuries, Diagnosis and Photographic Registration.
 - 1. Poisons and habit-forming drugs.
 - a. Sources and means of poisoning.
 - b. Symptoms and treatment.
 - c. The work of the municipal toxicologist.
 - 2. Spots and stains.
 - 3. Concealment of crime by chemical disintegration.
 - 4. The microscope, its uses and possibilities.
- B. Crime Agencies and Criminal Weapons.
 - 1. Chemical agencies.
 - 2. Mechanical agencies.
- C. Police Systems.
 - 1. European.
 - 2. American.
 - 3. Police records.
- D. Criminal Methods.
 - 1. Crimes and criminals.
 - 2. Attacks upon the individual.
 - 3. Attacks upon property.
- E. Systems of Identification.
 - 1. Bertillon.
 - 2. Finger prints.
- F. Criminal Investigation.
 - 1. Physical clues and evidence.
 - 2. Documentary clues and evidence.
- G. Questioned Documents.
 - 1. Handwriting.
 - 2. Typewriting.
 - 3. Writing material.
 - 4. Lectures.
 - "Stalking the Forger," a lecture on signature forgeries.
 - "Down the Ink-well," a lecture on the development of writing and writing materials with special application to problems in disputed handwriting.
 - "Beating the Protectograph," a lecture on check-raising, alterations, interlineations, etc.
 - "Wielders of the Poisoned Pen," a lecture on anonymous letters.
 - "Character Studies from the Psychology of Handwriting."
 - "Typewriter Identification and Examination of Seals, and Other Printed Matter."
- H. The Physical Interpretation of Character.
 - Three lectures:
 - Lecture 1.—The normal man, physically, mentally and morally. Racial types. Occupational types. Influence of climate and food on the development of mind and body. Competition and struggle for existence.

Lecture 2.—The abnormal man. Disturbed development. The physical, mental and moral stigmata of degeneration. Faulty nutrition. Unbalanced functional activities of the endocrine bodies.

Lecture 3.—Character reading. Possibilities and limitations.

S113d. FIELD AND LABORATORY METHODS IN CRIMINAL INVESTIGATION.
(Tentative Outline—Laboratory.)

- A. Criminal Injuries, Diagnosis and Photographic Registration.
 - 1. Outdoor work with the camera.
- B. Criminal Agencies and Criminal Weapons.
 - 1. Indoor work with the camera.
 - 2. Ballistics.
- C. Criminal Methods.
 - 1. Fire and explosions.
 - 2. Photography of colored objects.
- D. Systems of Identification.
 - 1. Finger print practice.
- E. Criminal Investigation.
 - 1. Elementary use of the microscope.
 - 2. Writing materials.
- F. Disputed Handwriting.
 - 1. Identification of handwriting.
 - 2. Identification of typewriting.

COURSE IN JUDICIAL PHOTOGRAPHY.

SCHOOL FOR POLICE OFFICERS BY THE POLICE DEPARTMENT OF THE
CITY OF BERKELEY.

EDWARD OSCAR HEINRICH, B. S., Instructor.
Tentative Outline for 1917.

I.—GENERAL PRINCIPLES OF PHOTOGRAPHY.

- A. The Camera, Its Use and Accessories.
 - a. Mechanical features of cameras.
 - b. Identity of all cameras irrespective of decorations or size.
 - c. Dark room.
 - d. Lenses.
 - 1. Optical properties.
 - 2. Manipulation and choice of.
- B. Chemical Processes of Photography.
 - a. Plates and films.
 - 1. Exposure.
 - 2. Development.
 - b. Prints.
 - 1. Exposure.
 - 2. Development.
 - c. Laboratory practice on subjects including metals, woods, glass, fabrics, copies, paintings, tracings, rough prints and color objects.
- C. Photography of Colored Objects.
 - a. Use of special plates.
 - b. Use of filters.
 - 1. For daylight.
 - 2. For artificial light.

c. Laboratory practice.

1. Photography of persons and localities by daylight.

II.—JUDICIAL PHOTOGRAPHY IN THE FIELD.

A. General Principles of Photography as a Recording Agent. Applicability to Problems of the Police.

B. Photography of Place of a Crime and Its Surroundings.

a. The photography of corpses with particular reference to explanatory circumstances.

1. General principles.
2. Reconstructed situations.
3. Photographic apparatus required.
4. Special uses for wide angle lenses.
5. Special uses for anastigmatic lenses.
6. Optical considerations in photography of wounds, blood stains, etc.
7. Photography in exact size.
8. Arrangement of the camera.
9. Conditions governing exposures.
10. Use of small cameras in limited spaces.
11. The tripod.
12. Unusual positions for the camera.
13. Examples from photography of corpses.
14. Extension tripods.
15. Photography without a tripod.
16. Plates.
17. Artificial light.
18. Position of light.
19. Preparation of corpses for photographing.
20. Special methods for giving life-like appearance to eyes.
21. The technic of the exposure.
22. The technic of the apparatus.
23. Choice of plates.
24. Reduction.
25. Supports and backgrounds.

b. Photography of blood stains.

1. General principles.
2. Technic of exposure.
3. Filters.
4. Plates.
5. Arrangement of apparatus.
6. Explorative possibilities of blood stain negatives.
7. Blood stains showing movement of bleeding object.
8. Blood stains showing no movement of bleeding object.
9. Bloody finger prints.
10. Invisible blood stains.

c. The photography of foot marks.

1. General principles.
2. Foot impressions.
3. Foot prints.
4. Invisible foot marks.
5. The apparatus.

6. The importance of parallelism between photographic plate and plane of the foot print.
7. Optical considerations.
8. Illumination.
9. Artificial light.
10. Plates.
- d. The photography of finger marks.
 1. General principles.
 2. Finger impressions.
 3. Finger prints.
 4. Invisible finger marks.
 5. Making invisible finger marks visible.
 6. Apparatus and plates.
 7. Illumination.
 8. Finger marks on glass.
 9. Use of artificial light.
 10. Special apparatus.
 11. Untreated finger prints.
 12. Impressions and "lifting" materials in special cases.
- e. Photography of miscellaneous traces.
 1. General principles.
 2. Tool marks.
 3. The apparatus.
 4. Entrance and traces via ceiling.
 5. Around corners with mirrors.
 6. Damage associated with burglaries, etc.
 - (1) Burglaries.
 - (2) Fires.
 - (3) Riots.
 - (4) Storms, etc.
 - (5) Malicious mischief.
- f. Metric perspective photography of Bertillon with special applications to places of crimes.
 1. General principles.
 2. Metric photographs.
 3. Scientific principles involved.
 4. Metric apparatus.
 5. Tripod.
 6. Camera.
 7. Lens.
 8. Application of the metric optical apparatus.
 9. Metric photography of corpses.
 10. Metric photography of interiors.
 11. Computation of reproductions and maps from negatives.
 12. Signaletic photography.
 13. Reading and interpretation of prints.
- g. Signaletic Photography.
 - a. Bertillon system.
 - b. Rules governing signaletic photography.
 - c. Reduction and head poses.

- d. Arrangement of pictures on prints.
- e. Marking of negatives.
- f. Camera.
- g. Focusing arrangements.
- h. Posing chair.
- i. Mirrors and reflectors.
- j. Adjustment of camera distances.
- k. Mounting for the camera.
- l. Procedure for taking a picture.
- m. Tests for accuracy of adjustments.
- n. Head position on ground glass.

III.—JUDICIAL PHOTOGRAPHY IN THE LABORATORY.

- A. General Principles of Photography as an Explorative Agent.
 - a. Microscopy and photography as related arts.
 - b. The differentiating power of photography.
 - c. Descriptive and explorative applicability to problems of the police and specialist.
- B. Photographic Methods of Discovery and Proof of Altered or Counterfeited Documents, Etc.
 - a. Types of problems arising.
 - b. Possibilities and limitations of methods.
 - c. Restoration of obliterated or obscured handwriting and the demonstration of erasures.
 - 1. The photographic problems involved.
 - 2. The technic of the camera and accessories.
 - 3. "Lifting" of blots.
 - 4. Typical examples.
 - 5. Alteration of numbers.
 - 6. Exposures by reflected and transmitted light.
 - 7. Special methods of preparation of subject for transmitted light exposures.
 - (1) Volatile hydrocarbons.
 - (2) Fixed hydrocarbons.
 - (3) After-treatment.
 - 8. Mechanical and chemical erasures.
 - 9. Rubbing materials.
 - 10. Bleaching materials.
 - 11. Typical disturbances of the surface of the paper.
 - 12. Scratches.
 - 13. Soiling.
 - 14. Photographic technic for the usual case.
 - 15. Special methods.
 - 16. Camera and accessories.
 - 17. Camera stand.
 - 18. Object holder.
 - 19. Lenses.
 - 20. Flexibility required of outfit.
 - d. Discovery and demonstration of additions and interlineations in written documents.
 - 1. General principles.

2. Differentiation of similar inks.
 3. Microscopic aids to ink differentiation.
 4. Properties of line crossings.
 5. Shades and shadows in an oblique writing.
 6. Typical examples.
 7. Relation of lines of writing to folds in paper.
 8. Age of inks.
 9. Pencil writing.
- C. Demonstrative Methods Applicable to Forgeries.
- a. General principles.
 - b. Photographic comparison of handwriting.
 - c. Demonstration of traced handwriting.
 - d. Marks associated with traced handwriting on obverse of document.
 - e. Marks associated with traced handwriting on reverse of document.
 - f. Invisible traces of writing in intaglio.
 - g. Trick photography and photographic forgeries.
- D. The Exposition of Writing With Invisible Inks.
- a. The nature of secret writing.
 - b. Direct exposure by photographic methods.
 - c. Special photographic methods.
 - d. Physical methods for making writing visible.
 - e. Contact methods with plates.
 - f. Special applications of contact methods for differentiating inks.
- E. Discovery and Demonstration of Post Office Problems.
- a. Usual problems arising.
 1. Opened letters.
 2. Stamp counterfeiting.
 3. Postmark forgeries.
 - b. Typical examples.
 - c. Photographic exploration of a re-sealed envelope.
 - d. Differentiation of sealing material by transmitted light.
 - e. Differentiation of sealing material by reflected light.
 - f. Technic of illumination.
 - g. Tests for accuracy of photographic method.
- F. Geometric Photographic Comparisons in Problems of Identification.
- a. General principles.
 - b. Hand and foot prints.
 - c. Comparative identification of finger prints.
 - d. Boot and shoe marks.
 - e. Hair.
 - f. Microscopic aids and geometric photomicrographs.
 - g. Photomicrographs of dust and secretions.
 - h. Blood stains.
 - i. Abrasions.
 - j. Special methods.
 - k. Particular cases.
- G. Judicial Radiography.
- a. General principles.
 - b. Applications of radiography to problems of evidence.
 - c. Radiography as an aid to signalitic proof.

H. Judicial Kinematograms.

- a. General principles.
- b. Applications of kinematograms.
 - 1. Laboratory demonstration material.
 - 2. Demonstration of theories built on circumstantial evidence.

IV.—DESIGN OF PHOTOGRAPHIC LABORATORY.**A. Points to be considered:**

- a. The studio.
- b. The dark room.
- c. The printing room.
- d. The enlarging room.
- e. The laboratory.
- f. Location with respect to other offices.
- g. Arrangements for exposures.
- h. Printing machines.
- i. Developing machines.

V.—INSTRUCTION FOR THE HANDLING AND PRESERVATION OF OBJECTS INTENDED FOR PHOTOGRAPHIC INVESTIGATION.**A. General Rules, with particular applications to:**

- a. Finger prints.
- b. Abrasions.
- c. Foods and liquids.
- d. Weapons and instruments.
- e. Documents.

Sixth Annual Meeting of Illinois Branch of the Institute of Criminal law and Criminology.—The sixth annual meeting of the Illinois State Branch of the Institute was held in Danville on May 31 and June 1. The program follows:

FIRST SESSION

3:00 P. M. Thursday, May 31

ANNUAL ADDRESS OF THE PRESIDENT

Hon. Jesse. L. Deck, State's Attorney, Decatur

Discussion - - - - - Judge W. D. Spurgin, Urbana

DINNER

6:30 P. M. Thursday, May 31

Members of the Bar Association and of the State's Attorney's Association, their wives and friends, are invited to join the members of the Illinois State Society in this dinner.

SECOND SESSION

8:00 P. M. Thursday, May 31

1. "A Brief Review of the Criminal Cases in the Supreme Court for the Past Year." - - - - - Henry Winthrop Ballantine

Dean of the College of Law, University of Illinois.

Discussion - - - - - L. A. Busch, State's Attorney, Urbana

Otis Glenn, State's Attorney, Murphysboro

2. "The Housing of Prisoners." - - - - - Dr. F. Emory Lyon

Superintendent Central Howard Association, Chicago

Discussion - A. L. Bowen, Secretary State Board of Charities, Springfield
Henry W. Tomlinson, Chicago
Charles A. Perdunn, Marshall

THIRD SESSION

Joint Session of the Illinois State Society and the
Illinois State Bar Association

8:00 P. M. Friday, June 1

1. "The Reform of Criminal Procedure" - - - Robert W. Millar
Professor of Law, Northwestern University, Chicago

Discussion - - - - - Oliver A. Harker
Professor of Law and formerly Dean of College of Law,

University of Illinois

F. H. Boggs, Judge of Circuit Court, Urbana

Harry Olson, Judge of Municipal Court, Chicago

2. "Organization of Psychopathic Work in the Criminal Courts"

Dr. Herman Adler, Director Juvenile Psychopathic Institute, Chicago

Discussion - William C. Graves, Supt. Illinois State Reformatory, Pontiac

OFFICERS

President - - - - - Jesse L. Deck
State's Attorney, Decatur

Vice-President - - - - - F. Emory Lyon
Superintendent Central Howard Association, Chicago

Secretary - - - - - William G. Hale
Professor of Law, University of Illinois

Treasurer - - - - - Robert W. Millar
Professor of Law, Northwestern University, Chicago

EXECUTIVE COUNCIL

The Officers above named ex-officio.

O. A. Harker, Chairman, Professor of Law, University of Illinois, Urbana

William N. Gemmill, Judge of Municipal Court, Chicago.

Thomas M. Kilbride, Clerk State Board of Pardons, Springfield

Jacob M. Loeb, of the Chicago Bar.

William C. Graves, Superintendent of State Reformatory, Pontiac.

Municipal Civil Service Examination for Promotion to Warden in the New York Department of Correction.—PART I—1. (a) The rules of the Department of Correction provide that institutional barbers shall comply with the provisions of the Sanitary Code of the Department of Health in the performance of their duties. Enumerate the principal regulations of the Department of Health on this subject and give the reason for each.

(b) The rules of the Department of Correction provide that the provisions of the State Prison Law governing the duties of physicians in state prisons are made applicable to resident physicians in the Department of Correction. Enumerate the principal duties of physicians in state prisons under the state prison law.

(c) The rules of the Department of Correction provide that the regulations of the Fire Department shall be complied with in the management of the stables of the Department. Enumerate the principal regulations of the Fire Department on this subject and give the reasons for each.

2. The rules of the Department provide that the Warden shall assign all penitentiary and workhouse prisoners to work. Indicate clearly the kinds of work to which you would assign each of the following classes of prisoners and give your reasons in each case.

- (a) The most hardened and degenerate prisoners.
- (b) Prisoners who are crippled but able to work.
- (c) Prisoners suffering from contagious diseases.
- (d) Young first offenders.
- (e) Weak men who have never learned any trade.

3. Give the essential provisions of the rules of the Department of Correction with reference to each of the following: Give the purpose of each of these regulations and suggest any modification or improvement of these regulations which would in your judgment be desirable, giving your reason for each recommendation.

- (a) Punishment.
- (b) Telephone calls.
- (c) Passes.
- (d) Mail.

4. Outline the educational facilities which you would provide for the prisoners in each of the following institutions of the Department of Correction:

- (a) Clearing House.
- (b) Workhouse.
- (c) City Prison.

5. Prepare a set of recommendations for submission to the Commissioner of Correction outlining the most efficient methods of co-operation between the wardens of institutions of the Department and the Parole Commission, giving your reasons for each recommendation.

DUTIES—PART II

To be finished by 4:30 P. M.

6. Give your opinion regarding each of the following statements and give your reasons in support of your opinion in each case:

- (a) Prisoners should be assigned in prison to industries in which they have worked before admission.
- (b) Prisoners should not be permitted to talk to one another while working in prison.
- (c) Only officers should be permitted to supervise the work of prisoners; employes should never be so assigned.

7. If given authority to classify the prisoners in your institution, on which of the following bases would you establish your classification. Discuss fully the advantages and the disadvantages of each system of classification:

- (a) Offence; (b) Age; (c) Mental condition; (d) Number of convictions;
- (e) Race; (f) Physical condition.

8. Give a description of the construction and the equipment of the rooms which you would establish in an institution of the Department of Correction for use in punishing prisoners and give your reasons in support of each point enumerated in your description.

9. You have been directed by the Commissioner of Correction to plan and

maintain a large cemetery on the same island on which your penal institution is located, for the burial of the pauper dead of the city.

(a) How would you plan such a cemetery to obtain the most economical use of the ground consistent with sanitary requirements?

(b) What arrangements would you make for coffining the bodies before burial?

(c) What precautions would you take to guard against typhoid fever?

10. Prepare a report to the Commissioner of Correction outlining a system of self-government for one of the institutions of the Department. Include in this report an outline of the system which you consider best suited to the requirements of the institution selected by you; give all details necessary for the installation of the system, and give your reasons for each recommendation.—May 22, 1917.

Crime in Ireland.—According to the *Irish Weekly Independent* the country is on the whole comparatively free from crime. At a time when political agitation runs high and so many causes conspire to keep Irishmen in a state of unrest, the fair record established by the country is singularly gratifying. The *Independent* says that the references made by the judges at the Spring Assizes to the general state of the country can be summarized in a few words. The cases before them are few, and the condition of the particular county or city satisfactory. In some few areas, says the *Independent*, agrarian troubles are not yet extinct, but they persist in a very much subdued form. The decline in ordinary crime is continuous as is conclusively proven by the Report of the Irish Prisons Board for 1915-1916. A decrease in the daily average of prisoners in custody has been recorded each year since 1909. At the same time, continues the Dublin journal, genuine alarm is felt in Great Britain at the serious increase in juvenile crime. The Irish Prisons Board reports that the number of young offenders committed to the Borstal Institution in 1915 was 30 as against 49 in 1914. The Prison Board regrets, adds the *Independent*, that more advantage is not taken by Courts of Summary Jurisdiction of the faculties for sending youths repeatedly convicted of petty offenses to the Borstal Institution, where they would have a decided chance of reformation. As the proportion of those discharged from the institution who are known to be doing well is eighty per cent, the "success of the Borstal treatment with the limited number of those who have undergone it in Ireland is well established." Happily, concludes the *Independent*, there does not seem to be much need for extending its benefits.

Criminal statistics in Great Britain are more or less unreliable owing to the war; the war has withdrawn large numbers of the populace from civil life to the military; courts-martial have supplanted the civil tribunals; military prisons, penal servitude, and the great increase in industrial life has diminished the volume of crime, thus proving that crime is, to a large extent, an economic problem, not, as some would have us believe, a medical proposition. The statistics as to crime in the Army and Navy should be placed side by side with civil data in order that we may draw intelligent and reliable conclusions therefrom.

JOSEPH MATTHEW SULLIVAN, Boston, Massachusetts.

The Lynching Record for 1916.—In view of the widespread discussion of the causes back of the migration of negroes to the North, it is timely to consider the lynchings for the year just closed. I find, according to the records

kept by Monroe N. Work, head of Division of Records and Research of the Tuskegee Institute, that in 1916 there have been 54 lynchings. Of those lynched, 50 were negroes and 4 were whites. This is 4 less negroes and 9 less whites than were put to death in 1915, when the record was 54 negroes and 13 whites. Included in the record are 3 women.

Fourteen (14), or more than one-fourth of the total lynchings, occurred in the state of Georgia. Of those put to death 42, or 77 per cent of the total, were charged with offenses other than rape. The charges for which whites were lynched were: murder, 3; suspected of cutting a woman, 1 (this a Mexican).

The charges for which negroes were put to death were: attempted rape, 9; killing officer of the law, 10; murder, 7; hog stealing and assisting another person to escape, 6; wounding officers of the law, 4; rape, 3; insult, 2; for each of the following offenses one person was put to death: slapping boy; robbing store; brushing against girl on street; assisting his son, accused of rape, to escape; entering a house for robbery or some other purpose; defending her son, who in defense of mother, killed man; fatally wounding a man with whom he had quarreled; speaking against mob in act of putting a man to death; attacking a man and wife with club.

Lynchings occurred in the following states: Alabama, 1; Arkansas, 4; Florida, 8; Georgia, 14; Kansas, 1; Kentucky, 2; Louisiana, 2; Mississippi, 1; Missouri, 1; North Carolina, 2; Oklahoma, 4; South Carolina, 2; Tennessee, 3; Texas, 9.

JOSEPH MATTHEW SULLIVAN, Boston, Massachusetts.

International Court of Justice.—Hostilities concluded, for truth's sake now and hereafter establish in some neutral country, as Holland or Switzerland, an international court for redressing military wrongs and a hundred sub-tribunals thereof presided over respectively by three or five judges, each from another neutral country, such as to pass upon both law and fact. A hundred different cases, heard simultaneously, would not congest the docket.

Such a court of original jurisdiction would constitute its own appeal forum by remanding appealed cases to three appellate jurists chosen from those not having originally passed thereon.

All cases wherein the claimant suffers grievance are within its jurisdiction, whether his people be victor or vanquished. Let each specific case be governed by strict rules of evidence with possibly slight modifications.

Today's press overflows with German atrocities in evacuated districts, forcible deportation of Belgians, young French women driven into immorality. The great German people cannot afford to pass unjustly into history as mere Huns.—E. H. SANFORD in *Chicago Herald*, May 1, 1917.

REVIEWS AND CRITICISMS

THE INTELLIGENCE OF THE FEEBLE-MINDED. By *Alfred Binet* and *Th. Simon*. Translated by Elizabeth S. Kite. Baltimore: Williams and Wilkins, 1916. Illustrated. Pp. 328. (Publication of the Vineland Training School.)

The translator has here made available in English three articles which appeared during the years 1908 and 1909 in *L'Année Psychologique*. This work as now published is a sequel to "The Development of the Intelligence Among Children." It is characterized by an intensive study of a few subjects, reproductions of conversations with these subjects, and discussions of these conversations.

Part I, on The Intelligence of the Feeble-Minded, extends through about one-half of the book. In this, the authors present "a new method of psychology, which may be called psychogenetics." In carrying out this method, they find all such faculties as attention, memory, judgment, reasoning, suggestibility, etc., present in some degree in all defectives. However, in the case of "practical acquisitions" such as reading, writing, and gaining a living, a different type of ability is required: ability to direct, adapt, and criticize one's thought. Here, the investigators find an absence of abilities which are possessed by the normal mind.

In Part II, on The Language of the Feeble-Minded, appears a detailed account of the application of the psychogenetic method to the measurement of the abilities of several subjects to use language. In several chapters, especially those upon the psychological conditions of speech and the relation between thought and language, the authors discuss issues which are of great interest to the general psychologist as well as to the psychiatrist.

Feeble-Mindedness and Dementia are discussed in Part III. After criticizing some current definitions of dementia, the authors give illustrations of the application of a measuring scale of intelligence. They distinguish between demented and defectives by contrasting the functioning of intelligence with its development. That is, data given show the demented's loss to be one of ability to evoke the facts of experience, and the defective's one of inability to develop; senile demented thus show better ability in matters of judgment than do defectives, although the senile demented is unable to call up specific ideas. This instinctive or attitudinal existence of demented gives rise to the distinctive difference between dementia and feeble-mindedness.

As stated above, this book treats of matters which are of interest to the general psychologist. Its special appeal is, however, to the psychologist who is particularly interested in abnormal mental development. Besides giving further illustrations of Binet's use of his measuring scale, it adds greatly to our knowledge of the feeble-minded.

Northwestern University.

W. L. UHL.

STUDY OF ORGAN INFERIORITY AND ITS PSYCHICAL COMPENSATION. A Contribution to Clinical Medicine. By *Alfred Adler*. (Trans. by Jelliffe.) *Nervous and mental disease monograph series*. No. 24. Nervous and Mental Disease Publishing Co. New York, 1917, pp. X and 86. \$1.50.

This monograph originally appeared in German a decade ago. Its author, a Viennese psychiatrist of considerable fame, rejects the typically Freudian view of the sexual etiology of psychoneuroses, substituting therefor a theory in which the concept of "organ inferiority" plays the leading role. Neurosis is overcompensation for the feeling of insufficiency born of discrepancy between ambition and attainment. The inferiority of some organ is the obstacle preventing the realization of one's ideal personality; there supervenes in the unconscious a battle for supremacy and dominion; insofar as the weakness is not overcome collateral paths of realization are opened. For example one becomes jealous or preternaturally ambitious in some new direction. The genius belongs here. But the extreme picture of thwarting is offered by the psychoneuroses. On the physiological side: "The inferior organs incapable of compensation fall victims, under the influence of the outside world, to more rapid or slower destruction. On the other hand nature forms from inferior organs, under the morphology, structures which are in many cases quite capable functionally and even at times somewhat better adapted to external circumstances, since they have derived their increase in strength in overcoming these obstacles and have consequently stood the test." (P. 56.)

The theory of organ inferiority instances in a new field the well-known theorem of Le Chatelier that "a system tends to change so as to minimize any external disturbance." The suggestiveness of this theorem when applied to mental phenomena is unquestionable, but no one need read farther than the first instance cited by Adler to feel the necessity of caution. From such extremely general formulations no more is to be obtained than has previously been put in; explain everything by a simple formula and in fact you explain nothing. Even Adler apologetically remarks "I do not wish to deduce too much from this case" after describing as his first instance a boy who suffered injury in the right eye three times within a half year, twice through being jabbed by a schoolfellow's pen, and the third time through a coal-splinter, inquiry revealing various forms of pathological vision in relatives from his grandfather down. A straightforward statement that this affords evidence of hereditary defect in the conjunctival reflex would seem adequate. Following Adler, however, one learns in this particular case about defective use of the visual psyche, and ends by believing that "there is no organ inferiority without accompanying inferiority in the sexual apparatus." "Every organ inferiority carries its heredity through, and makes itself felt by reason of an accompanying inferiority in the sexual apparatus." (P. 53.) And if you are really of the initiated the following quotation will not strike you as obscure: "A fundamentally inferior psychomotor superstructure is placed over the organ which responds

deficiently to its surroundings, a superstructure which, with every physical overexertion even as in playing or learning, may fail, and which will only suffice as a cultural control of the organ for a time, if a lasting interest, an inner attention, watches over the ordinarily wanton activity of the organ." (P. 72.)

The clinical cases are very largely examples of defect in the urinary apparatus.

We wonder that at this late day there is a demand for this monograph in translation.

Yale University.

RICHARD M. ELLIOTT.

EFFECTS OF HOOKWORM DISEASE ON THE MENTAL AND PHYSICAL DEVELOPMENT OF CHILDREN. By *Edward K. Strong, Jr.* International Health Commission—Publication No. 1. Rockefeller Foundation, N. Y., 1916. Pp. 121.

In 1912 the Rockefeller Sanitary Commission and the U. S. Public Service undertook an investigation for the securing of detailed information on the subject of the causes and the effects of hookworm. The present monograph is the result of the investigation. The study was made under the direction of Dr. Strong, and it is a significant step in the application of mental tests to social problems. It is remarkable for its compactness and careful use of methods of analysis, as well as for its social contribution.

One hundred and fifteen children were selected from a hookworm infested country for individual examination, physical and mental. Of these, 102 were studied and specially compared, divided into the following four groups: 22 A's (negative controls, or unaffected children); 12 B's (positive controls, or hookworm infected but untreated children); 36 C's (infected, treated and completely cured children); and 32 D's (incompletely cured subjects). The conclusions reached were on the basis of the comparison of the efficiency of the groups at different examinations, and of the relative improvement of the groups during the interval between a second and a third testing, a period of approximately four months.

The mental tests used were (1) Opposites, (2) A constant increment calculation test, (3) Logical memory, (4) Memory span for digits, (5) Hand-writing, (6) Goddard formboard, (7) The Binet-Simon tests. These mental tests showed on the average a distinct differentiation between the normal and infected groups, both as to absolute standing and as to improvement. The logical memory test turned out to be the best so far as the discerning of sluggish mental improvement in those infected with the hookworm was concerned. As would be expected irregularities were present in some of the tests. With the Binet-Simon series the normal children averaged approximately a year behind, the mildly infected 1.5 years, and the severe cases 2.0 years behind.

The physical tests showed clear initial difference between the normal and the hookworm infected, as to height, weight, grip and

lung capacity. Speed in tapping, and the index of fatigue in this test were not as good diagnostics in this respect. The interference of the hookworm in the older subjects was not noticeably different from that of the younger so far as the physical tests were concerned. One important conclusion is that "the rate of improvement physically has not been interfered with to anything like the extent shown in the mental tests."

Treatment does affect the amount of improvement radically, especially the mental improvement. With children 10-12 years of age this is more decided than with the older children 12-16, indicating that "the longer the child has the disease the more he will lose mentally, and the less rapid will be his mental development after he has been treated."

Northwestern University.

E. S. JONES.

THE BINET SCALE AND THE DIAGNOSIS OF FEEBLE-MINDEDNESS. By *Lewis M. Terman*. This JOURNAL, Vol. VII, No. 4. November, 1916. Pp. 530-543.

In this article the author makes an attempt to answer certain criticisms that have been made against clinical psychology, as related to the employment of the Binet-Simon scale of intelligence tests. The points about which his discussion is focussed are the following:

1. That most of the psychologists who use the Binet scale believe it to be a perfect instrument of measurement;
2. That they believe its use in the diagnosis of feeble-mindedness renders unnecessary any consideration of medical, neurological or sociological data concerning the subject;
3. That they regard the degree of intelligence, as determined by the scale, as the sole measure of the subject's fitness to be at large;
4. That they deliberately encourage persons without psychological training to undertake research with mental tests;
5. That the infallible criterion of feeble-mindedness in the adult subject is failure to pass the 12 year tests.

The article is well written and interesting, but the bias upon which it is predicated is at once apparent; that the real psychologist who is to determine the mentality and measure of a feeble-minded individual, should be a person qualified by a training in psychology, uncontaminated by medical knowledge. The author takes the usual position of the average non-medical psychologist, that the diagnoses of feeble-mindedness made by those who are psychological diagnosticians only, are superior to those made by individuals who are trained both in psychology and medicine. We will consider briefly the points that have been raised.

1. "Does the system of tests left us by Binet measure the intelligence with perfect accuracy?" The only reason this question ever could have been raised, if it ever was seriously raised, was the attitude which pedagogical psychologists took when the Binet-Simon scale of intelligence tests was first imported from Europe. Psychologists unwarrantedly, as they sprung up all over the country like mushrooms, appropriated the Binet-Simon scale of intelligence tests as their shib-

boletth and went about promiscuously dealing out labels of feeble-mindedness without fear or conscience. Even though feeble-mindedness is dependent upon pathology these persons without clinical training with the feeble-minded or insane, and utterly lacking in a knowledge of pathology, went about giving out inaccurate data concerning feeble-mindedness. They seemed to think it was a great achievement to label this and that individual but six and seven years of age mentally as if they thought "There is an end to it." These erroneous practices might be charged by some to the amateur psychologist, but where can you find a psychologist who will admit that he is an amateur? If this attitude had not been taken there would have been no need for this question to arise, but it is now taken for granted that no real trained conservative psychologist would assume such a position. This scale is a measure of education only; no test for mental status can be made perfect. No one will deny the value of the Binet-Simon scale, for it is of very great value, and one of the best instruments we have for the determination of intelligence, and yet it is not absolutely to be depended upon without first making some qualifications. As said before this test is the measure only of education. It does not give any definite idea of the capacity for achievement. It does not determine the ability of an individual to adapt himself to his environment. It does not take into consideration the mental habits or racial characteristics, and these are very serious objections.

2. "Do psychologists who use the Binet tests countenance the failure to utilize medical, neurological, sociological and other supplementary data?"

The demeanor of superiority which unfortunately seemed to be assumed by some psychologists did lead to the erroneous idea that real investigators of mental intelligence failed to utilize medical, neurological, sociological and other supplementary data. Feeble-mindedness is dependent upon pathology and to attempt to measure human intelligence and still ignore its etiology is as futile as it is absurd. Research had long been inaugurated in medicine, in neurology, in abnormal psychology concerning feeble-mindedness before Goddard ever turned his attention to the Binet-Simon scale of intelligence and as Terman says, "it is safe to say that no responsible person engaged in the study of the feeble-minded doubts the absolute necessity of co-ordinating these various lines of approach." The diagnosis of feeble-mindedness should never be made alone for educational guidance, since the problem of mental defect is one of preventive medicine, of psychiatry, of sociology and psychology. As White says the advances that have been made in psychology are largely due to the studies made of the abnormal aspect of this subject. On account of the regrettable fact that some psychologists have superciliously tried to ignore the psychiatric and neurological aspect of enfeeblement, many cases have been, and many cases of positive mental diseases are being labelled falsely.

Every day cases of organic brain diseases, hyperthyroidism, cretinism, juvenile paresis, hysteria, dementia praecox and in rare instances

psychopathic states occurring in febrile diseases are receiving the diagnosis of feeble-mindedness from those who are psychological diagnosticians only. It was my experience to hear a prominent psychological authority apply a "psychological diagnosis" to the delirium of typhoid fever. A few hours later the interne on whose service the patient happened to be, did a Widal test thereby clearing at once the diagnosis and prognosis in the case. This instance well illustrates the need that the average psychologist, who attempts to measure feeble-mindedness, has for a training in pathology. The psychologist is not alone at fault, however; the average physician is as poorly equipped in the elements of psychology as the psychologist is in the rudiments of pathology. We need today psychopathologists, that is individuals who are trained in psychology, in psychiatry, supplemented by institutional training and experience. Professor Terman has criticized the supplementary information called for in clinical examination blanks. He says such data is worthless, and that such blanks are the survival from the pre-scientific period. He oversteps the mark. If we wish to know the mental status of any individual we must place the results of our mental examination in proper relation with the individual's life history. We must make longitudinal sections of the individual, so to speak, and not mere cross sections.

3. "Do psychologists who defend the Binet method disregard the non-intellectual mental traits as co-determinants of a subject's social fitness or educational possibilities?" Unfortunately some psychologists who are ready to deny the appellation of amateurs have to a great extent disregarded the "non-intellectual traits," so-called, as co-determinants of the subject's social fitness or educational possibilities. Not so very long ago, the executive of one of the largest municipalities in the United States was classified as a moron, yet the person in question seems to administer the affairs of his city in a manner that is satisfactory even to those of opposite political faith. It is seriously doubted if this psychologist will ever attain to such prominence in his own field. There are many individuals living quiet, simple lives, who accumulate property who care for their children, who never come into conflict with the law and conventions of society, who are peaceful and law-abiding, self-supporting citizens, who never ask assistance from the state, and who would be classified nevertheless as morons and high grade imbeciles by the Binet-Simon system.

On the other hand there are individuals, many of them educated, even college graduates, who can pass this system with perfect ease, and yet they are absolutely lacking in judgment; childish and puerile in their behavior, and "incapable of conducting themselves with any degree of prudence," in business and social relations. They are in fact, lacking in "mother wit" and are really "educated fools."

4. "Do adherents of the Binet method hold that amateur Binet testers should be encouraged to attempt psychological diagnosis of the feeble-minded?" We agree with Professor Terman that only the trained psychologist should be permitted to make a real diagnosis. But there's the rub, who is the real psychologist? And since there is much

difference of opinion among them, who, as I stated before, will admit that he is an amateur? It is the writer's opinion that the psychologist who measures intelligence should be liberally trained in the arts and sciences, in psychology—didactic and laboratory—and in addition he should know pathology, since he is to deal with abnormal mental states. And that the psychologist *sine qua non* should be the holder of a medical degree. And as opposed to Professor Terman's idea, the positions of clinical psychology in the courts, reform schools, prisons and institutions for the feeble-minded should be in the hands of physicians, who have a psychological training, for these institutions are in fact museums of pathological cases.

5. "Do the responsible psychologists who use the Binet scale mechanically apply an automatic criterion in the diagnosis of feeble-mindedness?"

Unfortunately some psychologists have applied the Binet scale mechanically as an automatic criterion in the diagnosis of feeble-mindedness. If this had not been the case at least in some instances there would have been no necessity for asking this question and as Professor Terman has well said, if any psychologist ever hoped to find such a simple standard as 12-year intelligence an infallible criterion of fitness to be at large surely long since he has been disillusioned. There is a misunderstanding in the use of the term feeble-mindedness; in one instance it refers to a certain degree of intellectual mental defect as measured by an objective scale. This definition is psychological. But the one usually employed is a social definition since it refers to the adjustment of the individual to his environment. The psychological definition or rather the psychological criteria which we employ in our laboratories is perfectly all right in the laboratory, but we must depend more upon the social criterion even though it may be shifting and indefinite and somewhat regulated by geographical position. The information that is to be given to the public concerning the feeble-minded must be given in social terms, for the problem of feeble-mindedness cannot be solved in the laboratory. There are two conceptions of insanity; one a medical and the other a legal one and the confounding of these terms leads to confusion and erroneous ideas concerning the social problems of insanity. For the prevailing idea of insanity is purely a legal one and so the prevailing definition of feeble-mindedness is a social one. And in addition the ultimate test of mental capacity is the ability of the individual to adapt himself to his environment.

Michigan City, Ind.

PAUL E. BOWERS.

THE OFFENDER AND HIS RELATION TO LAW AND SOCIETY. By *Burdette G. Lewis*, Harper and Brothers, New York, pp. 371, Illustrated, Net \$2.00.

The author of this book, which is one of "Harper's Modern Science Series," is Commissioner of Correction of the City of New York. As stated by the publishers, therefore, "experience, science and common sense have gone to the making of this book."

It may be said, however, to be a running account of conditions and theories, past and present, rather than a scientific treatise. The much needed classic on penology to date is hardly discovered here. At the same time its discussion of the individual offender gives emphasis to the deductions of Dr. Wm. Healy and other recent writers who have made more intensive studies of the delinquent.

While the volume is divided into two parts, dealing first with society and the offender, and secondly with the prevention of crime, and has eighteen chapters and subjects, one gets the impression that the author's abundant material should have been more carefully classified. The reader finds penology, criminology, prison building, theories of education and government, psychiatry and methods of administration dealt with in practically all chapters and under various titles. Mr. Lewis is full of ideas and enthusiasm, however, and has apparently dictated his impressions at odd hours out of a busy life administering the correctional institutions of America's largest municipality.

On the whole, the author of "The Offender" is constructive in his criticisms and proposals, and exceedingly ambitious in his program. Classification of offenders and centralization of administration are two points upon which the greatest stress is laid. These and other essentials to the modern solution of the crime problem are set forth without much reference to such little difficulties in the way as expense, public sentiment, political opposition, etc. For example, the proposal that each state should have a correctional system consisting of some twenty different institutions for various classes and purposes, would seem to be wholly impracticable. Neither taxpayers or legislators are likely to be convinced of the necessity, especially in view of the well-known industrial inefficiency of most prisons.

The author's most frequent references are naturally to New York conditions and institutions. He apparently forgets that the size and prison population of most states would make such an ambitious scheme out of the question.

The assurance of this book, almost to the point of dogmatism, is hardly warranted by the present stage of experimentation in the field of criminology and penology. For instance the statement is frequently made: "We now know" this or that as to the offender or heredity or theories of training in a way which reminds us of the man who said he would rather not know so much, than to know so much that isn't so. This same element of finality is found in the author's discussion of theories of administration. His "there must be no compromise on this point," oft repeated, would perhaps find many objectors among those who have already proven other methods successful.

"The Offender" is highly suggestive, stimulating and decidedly worth reading. A lengthy appendix contains several articles descriptive of penal methods. The illustrations are chiefly of plans for correctional institutions in New York State and City. A list of authors quoted is given and a classified index makes ready reference to subject matter possible.

Chicago.

F. EMORY LYON.

THE MAN IN COURT. By *Frederick DeWitt Wells*. G. P. Putnam's Sons, New York, 1917, pp. 283. Price \$1.50.

This series of essays, written by a justice of the Municipal Court of New York, gives a vivid picture of what to the average layman appear to be the shortcomings of court procedure. It is well described as a "humorous visualization" of the complexities of legalistic methods. The author's description of "The Judge," "The Anxious Jury," "The Strenuous Lawyer," and "The Worried Client," are at once whimsical and truthful. The average court scene is set forth as both a stage setting, with all the elements and figures of a drama, and an arena for combat between the contending attorneys, with His Honor the Judge acting as umpire. The red tape, technical objections, farcical methods of selecting a jury and interminable delays in the disposal of calendar business, all come in for their share of ridicule. Much of this has been done before, but seldom in so readable a form, and perhaps never before by a member of the bench.

One naturally wishes that the judge would offer a remedy for this obvious and long deplored inefficiency in the courts. In this, however, the reader is somewhat disappointed, though some effort is made to show that many of the difficulties are unavoidable.

The principal constructive suggestion is found in the author's proposal that modern business efficiency be applied in the effort to secure justice by the application of present laws, and in securing better ones. Much of the waste of time and money in court procedure might be saved, Judge Wells truly states, "by an intelligent bureau for the administration of court business." He is perhaps correct in believing that the tendency in that direction is encouraging inasmuch as most lawyers are coming to be business men, rather than merely jury pleaders.

In a final chapter, the author gives a "Looking Backward" picture of possibilities in the application of business principles in the legal realm as seen by an imaginary Columbia graduate in 1947. This dissertation describes a "Judicial Corporation" which has grown to be a successful private enterprise, a co-operative but well established institution for the administration of justice.

The human interest of this volume, it should be said, centers in the first chapter, rather than the last. Here Judge Wells describes typical scenes in the Night Court. The veritable human laboratory which streams through this court each night is a real revelation to the novice as to how the other half lives. The fact that 47 per cent of this social drift-wood comes back to the mill again and again is ascribed to social conditions generally rather than to either court methods or the short-comings of correctional institutions.

The author gives this striking conclusion for the public to ponder: "The ordinary man knows that those who go under are such a small proportion of those who escape, that it seems either a ghastly joke or a terrible tragedy. The whole paraphernalia of the court room merely accents the contrast between those who are caught and those who go free."

Chicago.

F. EMORY LYON.

THE ORIGIN OF FINGER PRINTING. By *Sir William J. Herschell, Bart.* Oxford University Press, London, 1916. Pages, 41. 50c.

The purpose of this interesting little book is to record the beginning of the finger print method of personal identification in Bengal in 1858; to trace its development up to its public demonstration in Bengal from 1877-78; to examine the evidence that this method had been foreshadowed in Europe more than 100 years ago and had been general, especially in China, in ancient times. The pamphlet contains 20 illustrations.

Northwestern University.

ROBERT H. GAULT.

PRISON REFORM. Compiled by *Corinne Bacon.* The Hand Book Series. The H. W. Wilson Company, White Plains, New York, 1917. Pages 309. \$1.00 net.

The purpose of this book is to give the reader a general knowledge of prison reform in the United States. The sections included in the book are reprints of articles that have appeared in many places and are arranged under the following heads: History of Prison Reform; Conditions and Methods in Prisons and Reformatories; Sing Sing and Warden Osborne; Psychopathic Clinics and Classification of Prisoners; Convict Labor; Indeterminate Sentence; Probation and Parole; Jails and Centralized Control of Penal Institutions. An article by Mr. Thomas M. Osborne entitled "The Prison of the Future," completes the volume. Most of the articles are altogether too brief and sketchy to be of any use to a student of penology. The book will serve a good purpose however in bringing to the eye of the general reader in a small space the general subject of prison reform.

Northwestern University.

ROBERT H. GAULT.

STANDARDIZED FIELDS OF INQUIRY FOR CLINICAL STUDIES OF BORDER-LINE DEFECTIVES. By *Walter E. Fernald, M. D.,* Mental Hygiene, Apr. 1917. Pp. 211-34.

On the basis of the examination of some 1,500 individuals for diagnosis as to the presence or absence of mental defect at the out-patient clinics of the Massachusetts School for the Feeble-Minded, the following ten "Fields of Inquiry" were decided upon as furnishing a basis for individual case study:

1. Physical examination.
2. Family history.
3. Personal and development history.
4. School progress.
5. Examination in school work.
6. Practical knowledge and general information.
7. Social history and reactions.
8. Economic efficiency.
9. Moral reactions.
10. Mental examination.

The items of information were obtained from reliable sources. The examinations were made on the spot; intelligence tests were made

by the psychologist in the laboratory. Final diagnosis is made by graphic presentation of positive and negative findings in each field of inquiry. The minus sign is used to represent defect.

The charts accompanying the article are based on the diagnosis of 860 cases, 614 of whom were classed as feeble-minded. In comparing the cases diagnosed as "feeble-minded" and "not feeble-minded," the latter show some handicapped in physique, family history and developmental history, but the height of the curve is the field of moral reactions, showing that their bad behavior was the principal reason for being brought to the clinic. Of the feeble-minded group, 314 were morons, and 235 imbeciles. As a group the imbeciles get as high a percentage of minuses as possible in each field except family history and morals. The moron group are quite regular in their deficiencies, showing probability or corroboration of defect in almost every field.

The children diagnosed as backward show 86% minus in school progress, the common character of the group. By comparison, only 48% are minus in general information. Comparison with the defective group in general information, economic efficiency, and mental examination makes the diagnosis of backwardness seem only fair, especially in view of handicaps such as language and race difference. Of the cases on whom diagnosis was deferred the curve shows much the same condition. The basis of differentiation between this group and the backward was evolved by practice and from a thorough individual study rather than a *a priori* classification of terms.

To summarize, in a definitely feeble-minded person, evidence of mental defect is found in almost all fields of inquiry; even in the borderline cases, where the defect is slight as a rule, definite evidence of mental defect will be found in nearly all the fields. In cases which are not mentally defective the synopsis of findings is usually equally significant and consistent. If a patient has a normal mind his personal history, school progress, practical knowledge, etc., are those of a normal person. Social history and reactions and moral reactions are constantly modified by environmental influences, and if deficiencies are found in these fields only, it is probable that they are due to causes other than mental deficiency.

Evanston, Ill.

ELIZABETH PETTY SHAW.

HOW MAY WE DISCOVER THE CHILDREN WHO NEED SPECIAL CARE?

By *Robert M. Yerkes*. *Mental Hygiene*, Apr. 1917. Pp. 252-59.

As a practical approach to the task of better suiting educational treatment to the needs of the individual child a classification is suggested according to the major characteristics of mind: (1) the intellectually superior or super-normal; (2) the intellectually inferior or subnormal; (3) the intellectually dependent; (4) the affectively or instinctively defective; (5) the mentally normal or average.

The first class are those who give promise of becoming the leaders of the community, and are handicapped in our schools by insufficient opportunities. They need special attention and care, as upon them

human progress chiefly depends. The intellectual inferiors are the morons; they need intensely practical, industrial and vocational, training. The intellectual dependents are those who are incapable of self-supporting activity. These belong in special institutions. The instinctively or emotionally or morally peculiar children, the affective deviates, are characterized by underdeveloped, overdeveloped, or unusually related instincts. The juvenile delinquent and incorrigible are found here, and needless to say, need special study and care. The normal children make up 80-90% of the total number.

How select these groups? The method suggested aims at a relatively inexpensive way. A staff of experts, including a physician, a psychologist, an educator, and a social worker should be organized. First, the children should be given physical, medical and psychological examinations in groups of 20-50. The physical and medical examinations should be inspectional, while the psychological, a series of mental tests. The 10-15% of those belonging to the first four categories should be selected by this means. Next, a reasonably thorough examination, physical, medical and psychological, should be made of each exceptional pupil. Finally, a detailed report of findings and the recommendations of the experts should be made.

Evanston, Ill.

ELIZABETH PETTY SHAW.

THE PUBLIC DEFENDER; A NECESSARY FACTOR IN THE ADMINISTRATION OF JUSTICE. By *Mayer C. Goldman*—Foreword by Justice Wesley O. Howard, Appellate Division, New York Supreme Court. G. B. Putnam's Sons, New York, 1917. Pages 96. \$1.00 net.

This little book is a timely contribution to a subject that is very much in the public mind. The author has contributed already an article to this Journal on the subject of the Public Defender (see Vol. V, 5, 660 ff, and Vol. VI, 4, 557 ff). The volume before us comprises 8 chapters on the following subjects: The Public Defender Idea; The Injustice of the Assigned Council System; Public Prosecution and Prosecutors; Analysis of the Public Defender; The Ancient Conception of Crime; Specific Objections Considered; Other Remedies Inadequate; The March of the Movement; Appendix.—The Public Defender Chronology.

The author confidently asserts that the following advantages might accrue from the establishment of the office of public defender: (1) The theoretical safeguard surrounding the accused will be rendered more effective, (2) Cases will be more honestly and ably presented, (3) Manufactured defenses will be reduced, (4) Unfair discrimination will be eliminated, (5) Disreputable attorneys will be unable to prolong cases, (6) Pleas of guilty will be minimized, (7) The truth will be more available, (8) Expense will be decreased, (9) The criminal courts will be improved, (10) Guilty persons will not receive excessive punishment, (11) Confidence in the law and respect for it will be increased.

The final chapter and the appendix contain in summary a good historical resumé of the public defender idea. It will be useful to the student.

Northwestern University.

ROBERT H. GAULT.

CONVICT LABOR FOR ROAD WORK. By *J. E. Pennybacker*, Chief of Division of Road Economics, *H. S. Fairbank*, Highway Engineer, Office of Public Roads and Rural Engineering, and *Dr. W. F. Draper*, Past Assistant Surgeon, United States Public Health Service, Bulletin No. 414, U. S. Department of Agriculture.

Of late there has been a growing interest in the utilization of convicts in road building and in the preparation of road materials. The practices and methods followed in such utilization have varied considerably. No state or community has been acquainted with the policies of other states or communities. No central source of information has existed, and no attempt has been made by any group or body of persons interested to fix standards or to offer constructive suggestions. Public officials and those interested generally in this question are to be considered fortunate in now having for the first time in convenient and readily accessible form a most excellent and admirable study of the problem entitled "Convict Labor for Road Work," issued by the U. S. Department of Agriculture.

The report is based upon a most thorough investigation conducted during 1914 and 1915 by means of personal visits and interviews with prison officials in twenty-two states, supplemented by correspondence and by an intensive survey of all published data. It was the purpose of the authors to prepare a monograph which would cover "as nearly as possible all the questions that might arise in connection with either the adoption of a policy relating to the use of convict labor in road work or the actual working out of such a policy." The purpose has been fully realized.

After very briefly but completely discussing the various systems of convict labor in general and showing that the trend has been toward "those systems under which the convict is entirely employed by the state," the bulletin plunges into a presentation of the pros and cons of road work for convicts. The efficiency and economy of convict labor, the systems of management and discipline, the character, preparation and sort of food, the proper kinds of records and cost accounts, sanitation, the care of the sick and injured, etc., are all fully covered. Charts, diagrams, photographs, tables and specimen book-keeping forms add to the value of the work. The report also contains a complete bibliography as well as an appendix containing a digest of state laws relating to the employment of convicts on road work.

The authors conclude that no field can be selected in which prison labor may be more advantageously employed to the benefit of the state and the prisoner than in the improvement of the highways. It may be carried on with as much efficiency as industrial labor within the penitentiaries and with far greater benefit to the convict himself. In considering the efficiency and economy of convict labor as contrasted with

that of free labor, the authors wisely state that it is practically impossible to secure precise information on that point. Estimates are of no avail inasmuch as they usually rate the relative efficiency of the convict at from 50 per cent to 150 per cent of that of free labor. In two of the three cases cited in which reliable cost data were available, free labor was shown to be more efficient than convict labor, while in the third case, the extremely high price of free labor, due to certain political causes, was an important factor in giving convict labor its advantage.

As to systems of management, the authors state that there can be no stereotyped plan of control prescribed for all states and for all conditions, yet it is believed that as a rule the best results may be secured only when the responsibilities of prison and highway departments are clearly defined and separated, the former retaining administration of the penal law, while the latter supervises the road construction, the maintenance of proper housing conditions, the feeding, and also the disciplining of the convicts, but the latter should be done in accordance with the rules of the prison department.

It is impossible to do justice to the excellence of this document in a short review. The authors have been most careful in selecting their data and in drawing their conclusions. The report will prove to be a handy and valuable manual for prison officials and others interested in this field.

University of California.

IRA B. CROSS.

PUBLICATIONS RECEIVED

CRIMINAL SOCIOLOGY. By *Enrico Ferri*. The Modern Criminal Science Series No. 9. Translated by Joseph I. Kelly and John Lisle. Little, Brown & Co., Boston, 1917. Pages 575. Price \$5.00.

THE BASIS OF DURABLE PEACE. By *Cosmos*. Scribners, New York City, Pages 139.

INTRODUCTION TO SOCIAL PSYCHOLOGY. By *Charles A. Ellwood*, Appleton, New York, 1917. Pages 343.

SOCIAL DIAGNOSIS. By *Marv E. Richmond*. Russell Sage Foundation, New York, 1917. Pages 511. \$2.00 net.

PRACTICE AND TRANSFERENCE IN NORMAL AND FEEBLE-MINDED CHILDREN. By *Herbert Woodrow*. Reprinted from the Journal of Educational Psychology, March 1917.

MENTAL STATUS OF RURAL SCHOOL CHILDREN: REPORT OF PRELIMINARY SANITARY SURVEY MADE IN NEW CASTLE COUNTY, DELAWARE, WITH A DESCRIPTION OF THE TESTS EMPLOYED. By *E. H. Mullan*. Reprint No. 3377, from the Public Health Reports, Washington, 1917.

REVIEW OF THE VINELAND TRANSLATION OF ARTICLES. BY BINET AND SIMON. By *Lewis M. Terman*. Reprinted from the *Journal of Delinquency*, Volume 1, No. 5, Nov. 1916.

- THE LAWS OF RELATIVE FATIGUE. By *Raymond Dodge*. Reprinted from *The Psychological Review*, Vol. No. 24, No. 2, March, 1917.
- PROCEEDINGS OF THE 25TH ANNUAL MEETING OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION, NEW YORK, DECEMBER 27-28-29-30, 1916. Reprinted from the *Psychological Bulletin*, Feb. 1917, Vol. 14, No. 2.
- SERVICE INSTRUCTION OF AMERICAN CORPORATIONS. By *Leonard Felix Fuld*. Department of the Interior; Bureau of Education, Bulletin 1916, No. 34. Washington.
- THE INTELLIGENCE QUOTIENT OF FRANCIS GALTON. By *Lewis M. Terman*. Reprinted from the *American Journal of Psychology*; Volume 28, April, 1917.
- SOME PSYCHOLOGICAL ASPECTS OF PUBLIC SCHOOL MUSIC INSTRUCTIONS. By *W. V. Bingham*. Reprinted from the Journal of Proceedings of the Ninth Annual Meeting of the Musical Supervisor's National Conference, Lincoln, Neb., March, 1916.
- MENTALITY TESTS OF COLLEGE STUDENTS. By *W. V. Bingham*. Reprinted from the Journal of Applied Psychology, Volume 1, March, 1917.
- A TRIAL OF MENTAL AND PATHOLOGICAL TESTS FOR AN EXAMINATION FOR POLICEMAN AND FIREMAN. By *L. M. Terman*. Reprinted from the Journal of Applied Psychology, Volume 1, March, 1917.

Journal of the American Institute of Criminal Law and Criminology

Official Organ of the American Institute of Criminal Law and Criminology; of the American Prison Association; and of the American Society of Military Law.

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CONTENTS

EDITORIALS:

- Program of the Ninth Annual Meeting of the American Institute of Criminal Law and Criminology—The American Prison Association—Department of Public Welfare in Illinois 322

CONTRIBUTED ARTICLES:

1. Some Needed Reforms in Criminal Procedure.....
.....Jesse L. Deck 325
2. The Reform of Criminal Pleading in Illinois.....
.....Robert W. Millar 337

CONTENTS—Continued

3. Organization of Psychopathic Work in the Criminal Courts
.....*Herman M. Adler* 362
4. Some Aspects of English Penal Institutions.....*Anne Bates* 375
5. The Need, Propriety and Basis of Martial Law, With a
Review of the Authorities (Concluded).....*George S. Wallace* 406
6. The Administration of Military Justice at the United States
Disciplinary Barracks, Fort Leavenworth, Kansas.....*George V. Strong* 420
7. A Comparative Study of Feeble-Mindedness and Psycho-
pathic Personality Among Offenders in Court.....*V. V. Anderson* 428
8. The Co-operation of a Library Staff With the Criminal
Investigator*Edward Oscar Heinrich* 435

CORRESPONDENCE:

- People Versus Jurek*..... 441

JUDICIAL DECISIONS ON CRIMINAL LAW AND PRO- CEDURE 444

NOTES AND ABSTRACTS:

The Physical Examination of Prisoners on Admission to Prison (446)—Syphilis a Factor in Cause of Insanity (448)—Syphilis and Society (449)—Courts and Public Health (450)—Prison and Penal Legislation Adopted by the General Assembly of Louisiana in 1916 (451)—Leniency in the Administration of the Criminal Law (453)—New York Municipal Civil Service Examination for Court Attendant (454)—Wardens' Letters *Re* Utilization of Prison Labor in War Time (455)—Massachusetts Society for Aiding Discharged Prisoners (459)—The Canadian Criminal Identification Bureau: Annual Report, 1916 (459)—Police Schools (463)—University Lectures for Police (464)—Probationary System in the U. S. Navy: General Order 110 (464)—Organization of the Public Welfare Department in Illinois (468).

REVIEWS AND CRITICISMS:

Mental Conflicts and Misconduct, By *William Healy* (471)—Some Criteria for the Evaluation of Mental Tests and Test Series, By *Florence Mateer* (473)—The Psychology of Special Abilities and Disabilities, By *Augusta F. Bronner* (474)—Psychiatric Family Studies, By *A. Myerson* (476)—Feeble-Mindedness as Seen in Court, By *V. V. Anderson* (478).

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EDITORIALS

PROGRAM OF THE NINTH ANNUAL MEETING OF THE AMERICAN INSTITUTE OF CRIMINAL LAW AND CRIMINOLOGY

The ninth annual meeting of the American Institute of Criminal Law and Criminology will convene on Monday afternoon, September 3rd, 1917, at 2 o'clock, in the Court of Appeals Room, Saratoga Springs, New York.

The Secretary's office in the Grand Union Hotel, will be open for registration and reception of members during the entire sessions.

FIRST SESSION

Monday, September 3rd, 2 P. M., in Court of Appeals Room.
Annual Address of the President, John P. Briscoe, of the Court of Appeals, Maryland.

Report of Secretary, Edwin M. Abbott, of Pennsylvania.

Report of Treasurer, Bronson Winthrop, of New York.

Report of Executive Board, John H. Wigmore, of Illinois, Chairman.

Report of Committee on "Insanity and Criminal Responsibility,"
Edwin R. Keedy, of Pennsylvania, Chairman. Discussion.

Report of Committee on "Probation and Suspended Sentence," Herbert C. Parsons, Massachusetts.

Report of Committee on "Public Defender," Harry E. Smoot, of Illinois, Chairman.

Report of Committee on "Drugs and Crime," Francis Fisher Kane, of Pennsylvania, Chairman.

Report of Committee on "Classification and Definition of Crime," Ernst Freund, of Illinois, Chairman.

Report of Committee on "Modernization of Criminal Procedure," Robert W. Millar, of Illinois, Chairman.

Report of Society of Military Law, Henry W. Ballantine, of Illinois, Secretary.

Appointment of Committee on Nominations. 6:30—Annual dinner.

SECOND SESSION

Monday, September 3rd, 8:30 P. M., in Town Hall.
Annual Address, Thomas Mott Osborne, of New York, "Common Sense in Prison Management."
Report of Committee on "Crime and Immigration," Miss Kate Claghorn, of New York, Chairman. Discussion.

Report of Committee on "Sterilization of Criminals," Dr. William A. White, of Washington, D. C., Chairman. Discussion.

Report of Committee on "Indeterminate Sentence, Release on Parole and Pardon," Edward Lindsey, of Pennsylvania, Chairman.

DISCUSSION

THIRD SESSION

Tuesday, September 4th, 2 P. M., in Town Hall.

Report of Committee on "Criminal Statistics," John Koren, of Massachusetts, Chairman.

Report of Committee on "Teaching of Criminalistics in Universities and Colleges," Robert H. Gault, of Illinois, Chairman.

Report of Committee on "State Societies and New Memberships," Harry V. Osborne, of New Jersey, Chairman.

Report of Committee on "Promotion of Institute Measures," Frederic B. Crossley, of Illinois, Chairman. Discussion.

Report of Committee on "Publications," Robert H. Gault, of Illinois, Chairman.

Report of Committee on "Nominations." Election of Officers. Unfinished Business. New Business.

THE AMERICAN PRISON ASSOCIATION

THE AMERICAN PRISON ASSOCIATION WILL HOLD ITS NEXT ANNUAL MEETING IN NEW ORLEANS, NOVEMBER 19-23. HEAD-QUARTERS, 407 AUDUBON BUILDING.

DEPARTMENT OF PUBLIC WELFARE IN ILLINOIS

The readers of this JOURNAL are already informed of the creation of the State Department of Public Welfare in Illinois under the new Administrative Code which became a law by the action of the last legislature. On page 468 of this number we reprint from the organ of the State Charities Commission, the *Institution Quarterly*, with minor additions, some details relating to the organization of the Department.

The divisions of the Department in which we are most interested are headed by John L. Whitman, Superintendent of Prisons, who,

during many years has sustained an excellent reputation as Superintendent of the Chicago House of Correction; Mr. Colvin of Springfield, Superintendent of Pardons and Parole; Dr. Edward Singer, for several years Superintendent of the State Hospital for the Insane at Kankakee, State Alienist, and Dr. Herman Adler, Criminologist. The duties and qualifications of these officers are determined not by the law but by the Director of Public Welfare.

Dr. Adler, the criminologist, a few months ago succeeded Dr. William Healy as Director of the Juvenile Psychopathic Institute in Chicago. As such he has been associated with the work of the Juvenile Court of Cook County. The state has committed itself to the idea of the Juvenile Psychopathic Institute. The state and county governments are to co-operate hereafter in dealing with delinquency and particularly juvenile delinquency. Dr. Adler will retain the Directorship of the Juvenile Psychopathic Institute, with headquarters in Chicago. The county will continue a share of its former support and the state is bearing its share also.

Through the criminologist service, Dr. Adler has charge of the scientific and professional work at the schools for delinquents at Geneva and St. Charles, at the reformatory at Pontiac, and at the penitentiaries at Joliet and Chester, respectively. In addition the county will place at the disposal of the institute accommodations for a few children at the psychopathic department of the County Hospital. Professional work here is to be under the authority of the Juvenile Psychopathic Institute; also this will make a nucleus around which may group a great many of the activities in the community. The institute will run an out-patient service at the psychopathic hospital, and hopes to develop a competent social service. The plan is to make a good system in Chicago and then apply the same principles in other counties throughout the state according to local needs.

ROBERT H. GAULT.

SOME NEEDED REFORM IN CRIMINAL PROCEDURE¹

JESSE L. DECK²

Members and visiting friends of the Illinois State Branch of the American Institute of Criminal Law and Criminology: I salute you with a hearty welcome to this, the sixth annual meeting of the Illinois branch of the national organization which has as its most commendable object "to further the scientific study of crime, criminal law and procedure, to formulate and promote measures for solving the problems connected therewith, and co-ordinate the effort of individuals and of organizations interested in the administration of certain, speedy justice."

It is said that "the greatest study of mankind is man."

Accepting this proverb as true, there is great necessity for the existence of this society of which we are members and of fostering its principles for the reason that here we are endeavoring to so arrange human affairs that the individual in both his private and public relationships will accomplish the greatest amount of good in this life, first by preventing, so far as possible, inclinations toward crime, and secondly, where crime has been committed to work a restoration of the offender to a self-respecting life and to a useful position in society.

An organization working along such lines commends itself to all who regard the highest interests of society, and has a right to demand of us our careful thought and a maximum of our co-operative effort.

Being a State's Attorney engaged in the active administration of the criminal law of the state, I take it that this body would be more edified by my consideration in this address of some needed reforms in our criminal procedure, as I view the matter as a practitioner, rather than by any effort I might make at a consideration of the criminal from a scientific viewpoint which I would be illy prepared to do before a body of persons such as are here assembled, who have thought deeply along those lines.

I take it that in your selection of a man who is actually engaged in the administration of the law, that this action was taken with the expectation that he would take this turn in the matters appearing in his annual address.

¹Presidential address before the annual meeting of the Illinois Society of Criminal Law and Criminology, Danville, Ill., May, 1917.

²States Attorney for Macon County, Illinois. Retiring President of the Illinois Society, Decatur, Ill.

I understand also that the prevailing thought in the meeting of the bar association in session at this time, is as to matters which should be considered in connection with the drafting of a new state constitution and as some of the suggestions I shall make are to be considered in this connection, my suggested line of thought will be at least somewhat in keeping with the hour.

Being the chairman of the Committee on Criminal Law and Criminology of the State Bar Association this year, you need not be surprised if the suggestions here made are quite similar to those contained in the report of that committee to the State Bar, as your president happened to be close by when that report was prepared and concurs in all the reforms in criminal procedure there made. However, I feel that the measures there suggested are of sufficient importance to have the consideration of this body as well as that of the State Bar Association and the co-operation of both organizations in working out their passage into law.

Under the law of Illinois jurors are, by statute, made judges of the law as well as the facts. For many years it has been considered by our best legal talent that this is an ill-advised statute. At the opening of the case the juror takes an oath to well and truly try the issues joined in the case and to render a true verdict according to the law and the evidence. The case is tried upon certain theories of the law presented by the two contesting sides. The judge instructs the jury, particularly giving them the statutory definition of the crime involved and as a part of the statement of the law in the case. Along with other instructions the judge of the court at the request of defendant's attorney tells the jury that they are not only the sole judges of the facts but also they are the judges of the law of the case, and that they have the perfect legal right to disregard all that the judge has instructed them as to the law and themselves determine the law, provided they can, upon their oaths, say they are better judges of the law than the judge himself is, taking into consideration his superior means of knowing the law because of study and legal training.

Under this instruction the jury at once becomes the legislature and the court, and may say that the law should never have been passed, or that it was illegally passed or that the word black means white and that the legislature didn't mean by the statute what it said, or that the statute is unconstitutional and void, even if the Supreme Court has ruled a dozen times that it is constitutional.

This statute is certainly an anomaly and at the same time an enigma in our jurisprudence. If there ever was any justification for its being a part of our law it would seem that the reason therefor has long since ceased to exist.

Following it to its logical conclusion, our Supreme Court was, in the very recent case of the *People v. Zurek*, 277 Ill. 620, compelled to hold that the trial court is without power to direct a verdict for the defendant even in a case where the evidence is so flimsy that the court knows, before verdict, that the verdict will not be allowed to stand for the reason that under this statute the jury is made the judge of the law as well as the facts and the court cannot, preemptorily, interpret the law for the jury. A fine situation, indeed, for a court, of any respectability to be in, isn't it?

Our courts should not be so impotent but should be clothed with legal authority to direct verdicts for defendants where the evidence will not justify verdicts and thus put an end to useless and expensive litigation.

This troublesome situation could be remedied by the simple repeal of the statute mentioned.

AMENDING INDICTMENTS.

Power should be conferred on the prosecutor to amend indictments in form as well as substance as long as the amendment is in furtherance of a legal statement of the offense for which the grand jury found the indictment.

Under our system of legal machinery, the indictment is framed by the prosecutor anyway and the grand jury has simply adopted his language in making the charge. Consequently where some mistake has intervened to invalidate the indictment why should not the power be extended to the person who drafted it to correct such error and thereby breathe into it the breath of life and at the same time make it say just what the grand jury intended it should when they voted the bill?

This plan would frequently be of benefit to the defendant as well as of advantage in dispatching the business of criminal courts by saving the defendant from awaiting in jail for months before another grand jury convenes to try its hand on a new bill in his case.

In case such amendments as those proposed, worked prejudicial surprise to the defendant the statute could provide for continuances in those instances, giving him ample time for preparation for trial.

ABOLITION OF THE GRAND JURY.

In view of what I have said as to amendments to indictments I anticipate that some will say why not obviate the difficulty suggested by abolishing the grand jury entirely, which could be done by statute and give the State's Attorney the power to institute all prosecutions by filing informations in our trial courts as is the law and practice in some of our states.

I did not suggest that because I do not agree with many of the members of the legal profession who feel that this ancient institution should be abolished.

In my judgment the grand jury has its place.

It is an open investigating and accusing body to which all have access.

Where one initiates all prosecutions he wields a tremendous power and is under an over-burdening responsibility.

When prosecutors happened to be in office, under such a system, who did not see fit to do much at prosecuting, the community would suffer greatly.

No man will occupy this office long until some of his personal or political friends will be in the toils of the law somewhere, and, in such cases he is made glad that there is a body with the power to prefer the charge. In such cases it is plain to be seen that without the grand jury the prosecutor might be very slow to start proceedings against such persons, whereas, with the grand jury, preferring the charge he can try his case without embarrassment in the discharge of his every-day duty.

However, I do think that the number of grand jurors could very properly be reduced in these days of newspapers and rapid transit of news.

When the system was originated it was so designed that there would be a representative present on the grand jury from every little neighborhood of the county so that there would be some member of that body who knew of every crime of any consequence occurring in every neighborhood in the county.

In these days when we read before breakfast what was transpiring in all the nations of the earth the day before, the reason of having so large a number on the grand jury no longer exists.

In this day seven is an amply large number of persons to constitute a grand jury. They could do all that is required of that body just as well, with more dispatch and with far less expense to the county.

Under the present plan it isn't an infrequent thing that it costs the county from \$40.00 to \$50.00 each for the mere returning of the indictments that the legal machinery may be set in motion for the trial of defendants.

By reducing the number of grand jurors this expense could be materially curtailed without the loss of any efficiency.

PEOPLE SHOULD HAVE REVIEW.

The people should be allowed to have a review of the decisions of our trial courts in rulings upon matters of criminal pleadings which is now denied them in Illinois.

Under our present practice if the trial court quashes the indictment, that is an end of the case whether the court is right or wrong in the ruling.

This right of review, it is perceived, should be granted the people in the interests of substantial justice.

PAROLE SHOULD BE EXTENDED.

My practice has demonstrated to me that the benefits of the parole statute should be extended to prisoners serving sentences in our county jails. At the present time it has no application to these prisoners. Under the present system when the term of court is closed at which sentence is imposed, the court is powerless to modify the sentence.

I have seen many cases where unforeseen circumstances have arisen under which, in strict justice, there should have been a modification of the sentence and where the trial judge wished he had the power to modify the sentence, but found himself powerless, because the term of court was adjourned at which the sentence was imposed. Physical conditions often arise where this course would be advisable rather than through the circuitious route of a pardon by the governor.

Under the plan proposed the prisoner near the close of his sentence, upon application, could be placed upon parole and thus be placed under surveillance of a parole officer to assist him in obtaining and continuing in honorable employment and to teach him how to live honestly and to the best interests of himself and society.

After being under such tutelage for a year the prisoner, in many instances would be reclaimed to society, whereas under the present system he is liberated from the county jail at the end of his sentence, usually without means of support or employment, with the result that he frequently goes back to old associates whose companionship is detri-

mental to his welfare and often back to the same practices which caused his arrest in the first place, only to again be brought to other or greater trouble than before.

The parole system has proven itself to be of great benefit to prisoners in our penitentiaries. Is it not time now to take another advance step and extend its benefits to prisoners who are serving sentences in our jails and work houses?

The administration of such a statute could be given over to some county officer without any additional expense, or with but slightly additional expense to the county.

AGE OF RESPONSIBILITY SHOULD BE ADVANCED.

I am impressed with the fact that the age at which children may be found to be delinquents should be raised from the present maximum age of 17 for boys and 18 for girls. It should be at least 18 for boys and 20 for girls, in my judgment. There are many girls between the ages of 18 and 20 who could be saved from lives of debauchery if the courts had the power to handle them as delinquents, thus exercising supervising control over them.

By raising the age, suggested as to females, males would frequently be deterred until girls are two years older from doing those things which tend to lead them astray, for fear of prosecution for doing acts tending to render them delinquent.

So many girls are of immature judgment at 18 that the present statute in many cases falls short of accomplishing the good for them that it should.

Under the present statute, after the girl is 18 years of age, the court has no control over her actions, excepting she may be convicted of crime, and is powerless to commit her to a training school where she could be trained in decent living.

The use of the delinquency statute has demonstrated to my satisfaction, particularly in the case of girls, that it could be made much more efficacious if the existing age limits were raised as suggested.

SPEEDING UP JUSTICE.

In the matter of the working out of *speedy justice* our law should be such that the verdict of a jury may be constituted by an affirmative vote of less than twelve jurors.

In civil as well as misdemeanor cases nine affirmative votes should be sufficient to constitute a verdict, and this reform could, even with much propriety, be extended to include felonies, capital cases excepted.

By this reform the one stubborn juror will be eliminated, in most cases justice more expeditiously dispatched, and chances for designed miscarriages of justice will be greatly reduced.

When the gravest felony cases go to the Supreme Court, a concurrence of a majority of the judges is all that is required to constitute a judgment by that tribunal. It would seem that a concurrence by three-fourths of the jurors trying a case, either civil or criminal, capital cases possibly excepted, would be sufficient to guarantee a proper administration of justice, especially with the trial judge sitting nearby to grant a new trial in cases of verdicts that are not justified by the evidence.

THE IMMUNITY STATUTE.

The immunity statute which applies to cases of bribery and attempted bribery only, should be extended so that it is of general application in criminal cases.

It is a very effective statute in the cases to which it applies. In cases of bribery and attempted bribery the court is empowered to make an order of record exempting a witness from prosecution himself, because of any criminal connection he may have had with the affair, and then compel him to testify to all facts in his possession pertaining to the case.

Why should so effective an instrument in the administration of criminal law be so circumscribed and limited in its operation as it is by the present statute?

Suppose a case where twelve men are engaged in unlawful gaming or any other unlawful enterprise, excepting in the cases mentioned in the statute. Under the present law all they have to do is to keep silent when they are brought before the grand jury or court and claim their constitutional privilege, and no evidence is to be had in the case.

Would it not be well, in the interests of justice, for the law to be such that the court could give two or three of such persons immunity from punishment and then compel them to testify?

In this case some could be brought to justice and the unlawful practice involved discouraged, while under the present status of the law all the offenders go unwhipped of justice. For a more detailed discussion of this subject by the writer see the February issue, 1916, of the "Illinois Law Review."

SECRECY OF GRAND JURY SESSION.

There should be a statute making it a criminal offense for a witness before a grand jury to divulge what was there asked him.

The effectiveness of the work of the grand jury is frequently impaired by witnesses going out and publishing to the world the persons who may be under investigation. At the present time, the court can handle this matter so far as the jurors themselves are concerned, but seems to be powerless to control the actions of witnesses after they have been discharged. If the witness could be given to understand that he was legally bound to secrecy, the administration of the criminal law would be materially strengthened.

BASTARDY STATUTES.

There is no prosecutor anywhere in Illinois, and but few general practitioners, but who have been profoundly impressed with the impotency of our bastardy statute. The present statute is antiquated and altogether inadequate from the standpoint of justice.

In the first place it provides a maximum amount of \$550.00 to be paid by the putative father upon conviction for the support of his offspring, and the father has the right to scatter this out in installment payments covering a period of nine years. In the present day this maximum amount is wholly insufficient to buy the child the necessities of life, to bring it up to school age to say nothing of providing any education for it.

In the next place bastardy should be made an extraditable offense so that the putative father could be apprehended anywhere and brought back for trial.

Under the present law, when he leaves the state of the mother's residence she is powerless to bring him back for trial and in many instances is not only compelled to bear her shame and disgrace alone but single-handed to provide the means for the support and education of the child. A law with such inherent weakness is the merest makeshift and should no longer incumber our statutes.

A statute should displace it subjecting the putative father to extradition for trial, and also with sufficient breadth, upon his conviction, to compel him to support and educate his offspring to the same extent that a legitimate father is required for his child. A statute with less power than this is an unjust discrimination against the bastard child who is in no way responsible for his situation.

For a number of years attempts have been made to get some legislation along the lines suggested, and it does seem that we should be to the point now where the present statute could be supplanted by a more just and humane one.

COMPULSION OF WITNESSES.

I am impressed with the fact that legal authority should be vested in some officer, likely best in the State's Attorneys or Chiefs of Police, so that witnesses could be compelled to come before them, and under constitutional guarantees, be compelled to state what evidence they may know concerning the commission of recent crimes, to assist the authorities in obtaining the facts while they are fresh in the minds of the witness and before unrighteous and smuggling influences have had an opportunity to intervene.

In all of the counties outside of Cook, it is sometimes months after a crime is committed before a grand jury convenes, and aside from the grand jury there is no legally constituted agency with authority to compel witnesses to answer questions. The witnesses should also be required to answer under oath under the pains and penalties of perjury.

At the present time the State's Attorney and Chief of Police may invite the witnesses to come to their offices for interviews, but there is no compelling power behind it and if, perchance, they come there is no law requiring that they shall answer the questions truthfully.

The statute I have in mind is the present statute pertaining to the authority of the Fire Marshal and his deputies, extended so that it is of general application in all cases and so arranged that it may be of use to State's Attorneys and Chiefs of Police who are particularly charged with the administration of our criminal statutes.

The splendid work done by our Fire Marshall and his assistants during the last three or four years has only been possible because of this statute that gives them power to call witnesses before them and to compel them to tell the truth, under the pains and penalties of wilful perjury concerning suspicious fires.

This statute has demonstrated itself to be of such efficiency in breaking up arson rings and fire-bug combinations that I am convinced that such right of inquiry should not be limited to supposed arson cases, but extended to proper officers in all criminal cases. By such a statute law enforcement would be greatly aided.

COMMENT ON DEFENDANTS FAILURE TO TESTIFY.

The statute should be repealed which prohibits the prosecutor from commenting upon the failure of the defendant in criminal cases to take the stand and testify in his own behalf.

In civil cases the defendant's failure to contradict the plaintiffs

evidence by his own testimony is one of the strongest weapons in argument against him.

In criminal cases it is perceived there is just one reason for the defendant's failure to contradict the position taken by the state against him, and that is that for him to do so may subject him to a prosecution for perjury.

If it is true that he is a law violator as charged in the indictment, and he is in practically every case where he fails to testify, it is perceived that there is no good reason in justice why he should be shielded by a statute that places a muzzle upon the prosecutor and refuses him the right to say that the defendant himself has not denied the case made out against him, and this being true why should the jury do that for him, or to use other similar arguments. If there ever was any good reason for the statute mentioned it would seem that it has long since failed. I have heard much discussion concerning this statute and have never yet heard of a single satisfactory reason for burdening our statute books with this nuisance of a muzzle.

FILING INFORMATION.

In redrafting the state constitution, provision should be made that in a case where a defendant is arrested on a felony charge and desires to plead guilty at once, the State's Attorney may file an information immediately in the Circuit Court and the court at once, either in term time or vacation, take his plea and pass sentence.

It frequently happens that a person is arrested in such cases just after the adjournment of a grand jury and desires to plead guilty to the charge and begin serving his sentence without delay.

Under the present law of Illinois, felony charges must be preferred by a grand jury so that in the case suggested the prisoner, if unable to give bail, must be in jail for months for the convening of the grand jury and returning of an indictment by that body before he can have the privilege of pleading guilty. All the time he has spent in jail is absolutely lost to him and an expense to the county, while under the plan suggested he could, during the same period have his time partially served out in the penitentiary while he would otherwise be languishing in jail for the convening of a grand jury.

Where a defendant has had a preliminary hearing before a Justice of the Peace it is perceived that there is no real necessity to again take the time of a grand jury to consider the same case.

While amending the constitution I propose that where a person has been held by an examining magistrate that he be not held to

answer to an indictment preferred by a grand jury, but to an information filed against him by the State's Attorney, and that the mere fact that he is held by the magistrate shall be sufficient to require the prosecutor to file an information in the case, both in misdemeanor and felony cases.

These are days of efficiency in business, and our criminal law should keep pace. I suggest this plan as a means of expediting the administration of the criminal law and making the administration of the criminal law more effective and businesslike at less expense.

In a preliminary hearing the Justice of the Peace considers two questions. First, Has a crime been committed? and, second, Are there reasonable grounds for believing that the defendant charged committed it? If he answers both of these questions affirmatively he binds the defendant over to await the action of the grand jury. The defendant then waits in jail, possibly for months, if he cannot give bail, and finally a grand jury is convened that considers the same case.

Precisely the same questions are before the grand jury that were before the examining magistrate, and if the grand jury answers the same two questions affirmatively an indictment is found. Why this double hearing with its incidental delay and expense?

The suggestion is that when a magistrate answers the two questions affirmatively from the evidence before him, that this shall *ipso facto* require the State's Attorney to file an information at once against the defendant in any court having jurisdiction to finally dispose of the case without the circumlocution of the grand jury again hearing and passing again upon the precise case. One hearing and one expense incidental thereto should be sufficient in such cases. In the event of the filing of such informations the law should be such that the defendant could plead at once, if he desires, either in term time or vacation, for the reasons previously stated.

CONCURRENT JURISDICTION FOR COUNTY AND CIRCUIT COURTS.

To relieve the congestion in our Circuit Courts, I would suggest that in counties in which the probate and county courts are separated that the County Courts be vested with concurrent jurisdiction with the Circuit Courts in all criminal cases, providing that such County Courts can try such felony cases, as well as misdemeanor cases, as are certified to them by the Circuit Courts, and providing for the certifying of felony cases in the discretion of the Circuit Court as well as misdemeanors to such County Courts for trial.

In this paper I have made suggestions as have occurred to me

as worthy of consideration by those who are interested both in the welfare of the criminal, and in the expeditious administration of the criminal law.

If upon consideration of the reforms proposed any of them appear to be worthy of the effort of this society to the end that they may be passed into law, I trust that we may get vigorously behind any such and use the influence of this organization in bringing about their passage by the legislature, for after all our meeting and discussing and resolving can only come to fruition when our suggestions have been crystallized into law, and if we fail here we shall largely fail in our effort.

This initial address of our meeting this year would be lacking, it seems to me, if I did not at least suggest that possibly the greatest crisis in national history is upon us, when democracy is to be tried out and tested out as never before.

May the principals for which we stand nationally, as a people, be loyally supported by every member of this organization, to the end that the blessings of liberty, of conscience, of speech, and equality before the law which we possess may be enjoyed by mankind everywhere.

May we stand every man in his place round about the camp as did the Israelites of old, and may our effort be so ordered that victory may come to our arms and tyranny be driven from the face of the earth. When this has come to pass we will observe that which the poet foresaw with a prophet's eye when he beheld the day:

“When navies are forgotten
And fleets are useless things,
When the dove shall warm her bosom
Beneath the eagle's wings;

When memory of battles
At last is strange and old,
When nations have one banner
And creeds have found one fold;

When the hand that sprinkles midnight
With its powdered drifts of suns,
Has hushed this awful tumult,
Of sects, and swords, and guns;

When hate's last note of discord,
In all God's world shall cease,
In the conquest that is service,
In victory that is peace.”

THE REFORM OF CRIMINAL PLEADING IN ILLINOIS¹

ROBERT W. MILLAR²

In that commentary on the great work of Beccaria which is ascribed to Voltaire, the author speaks of criminal procedure as "a law which ought certainly to be no less favorable to the innocent than terrible to the guilty."³ But the aim of Montesquieu and Beccaria, of Romilly and Brougham has long since been accomplished. In our day, for English speaking jurisdictions, at least, the problem has changed, the emphasis has shifted. To voice the modern demand, the words of the commentator require to be transposed. The need of today is that criminal procedure shall be "no less terrible to the guilty than favorable to the innocent." It is this need which has prompted the call so frequently uttered during the past quarter of a century for recasting and reformation. In some jurisdictions the call has been answered wisely and well. Abroad, England, and the British colonies, at home, the Commonwealth of Massachusetts, have acknowledged the need, and met it in excellent measure. But in the United States, generally, and our own State, in particular, the response has been but feeble and fragmentary.

It is agreed, on all hands, that in any system of penal justice, punishment of the guilty as well as acquittal of the innocent should be swift and certain. But speed and certainty are precisely what our criminal procedure lacks. In some measure, because of a habit of mind on the part of lawyers and judges, but largely because of the refusal on the part of legislators to observe the common sense dictate that when an instrumentality has served its purpose it should be laid aside, the processes of criminal law in this State move haltingly toward an uncertain goal. Too many unnecessary steps are taken, too much time is spent on the non-essential, the quest too frequently becomes a search for the legalistic rather than the human truth. The specific faults from which this condition arises have been often pointed out and remedies efficient to meet them as often proposed, for the most part in vain. But it is to be remembered that Lord Eldon looked upon railroads as dangerous innovations.⁴ Some day these remedies will find lodgment in our statutes, and to hasten that day is

¹A paper read before the joint meeting of the Illinois State Society of the American Institute of Criminal Law and Criminology and the Illinois State Bar Association, at Danville, Illinois, June 1, 1917.

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³Beccaria, *Crimes and Punishments*, lxxii, London, 1769.

⁴Zane, *The Five Ages of the Bench and Bar of England*, 1 Select Essays in Anglo-American Legal History, 724.

the duty of every lawyer who, with Jeremy Bentham, decries the "original sin of judicial procedure—the substitution of the actual ends of judicature for the ends of justice."⁵

Consistently enough with the shifting of emphasis before mentioned, one characteristic of the existing condition is precisely that which in the eyes of the French philosophers of the 18th century might have passed for a virtue, namely, the tendency to cause a given case to be viewed abstractly and decided mechanically, by subordinating the verities to an artificial juristic situation—in other words, the disposition to make the ultimate inquiry, not whether the accused is guilty or innocent, but whether the requirements of the applicable legal formula have been in all respects satisfied. It is the "attitude of record-worship," the "trial of the record rather than the case," to use the phrases of Professor Pound,⁶ that is here in question. And the root of this evil is to be found, for the most part, in the present rules of criminal pleading, particularly in those relating to the framing of the indictment.

From a superficial examination of the statutory provision that every indictment "shall be deemed sufficiently technical and correct which states the offense in the terms and language of the statutes creating the offense or so plainly that the nature of the offense may be readily understood by the jury," with the further injunction that after the caption, the offense and the time and place of its commission shall be inserted with reasonable certainty,⁷ it might be supposed that the task of the pleader need not involve great technical skill. But in following the course of decision under this section we become painfully aware that the case is quite otherwise. The "terms and language of the statute" will not suffice except where the statute describes the particular act constituting the offense, and the "nature of the offense" has come to mean something essentially different from the real signification of the words. And this has been brought about by the application of two common law doctrines, generally followed in American jurisdictions—first, that the indictment shall set forth all the juristic elements of the offense, shall allege with completeness the State's cause of action; and, secondly, that its allegations shall answer the test of certainty as fixed by the common law. It is to

⁵Bentham, *Principles of Judicial Procedure*, c. 29.

⁶*A Practical Program of Procedural Reform*, Proceedings of Illinois State Bar Association for 1910, p. 395; Report of Committee E of the American Institute of Criminal Law and Criminology, 1 *Journal of Criminal Law and Criminology*, 587.

⁷Sec. 6, Div. XI, Criminal Code; Sec. 408, c. 38, Hurd's Statutes, 1913.

these doctrines that we owe, in large measure, the miscarriages, not of law, but of justice, which our reports so abundantly disclose.

In any endeavor to improve the system of criminal pleading, with relation to the indictment, the first thing is to determine the fundamental question of procedural polity: Is the office of the indictment to remain as it is, not only that of furnishing information to the defendant of what he is charged with, but also and with equal emphasis that of furnishing a statement of the offense to the court and providing a memorial beyond whose borders we need not look for the legal elements of the crime? In other words, are we to say that the function of the indictment should be more than that of giving reasonable notice to the accused, of advising him of what he is called upon to meet? Every consideration of practical justice requires that a negative answer be returned. So far as notice to the court is concerned, as distinguished from notice to the accused, the supposed benefit of this to the defendant, as marked by a learned writer, is that he is enabled to call for a decision on the sufficiency of the case as shown on the face of the indictment. But, as this writer says: "Of what importance is it to the court to know whether or not the facts alleged constitute an offense, when, after the evidence has been presented, it will have an opportunity to determine whether or not the facts proven constitute an offense? * * * What real difference can it make to him [the defendant] whether he present a defense which he has by a plea of not guilty, or by a demurrer? If he is allowed to present the particular matter which he wishes to allege by a plea of not guilty, he is deprived of no substantial right by a law which abolishes motions to quash. If the right to demur is taken away, it cannot be said that any constitutional privilege has been infringed. Nor can it be said that any right of the defendant is violated if the court is prohibited from deciding the case on the pleadings, and is required to decide it on the facts."⁸ So far as concerns the function which the indictment is supposed to fulfill in providing a memorial, the sole usefulness with which it is credited is in aiding the defendant to establish a defense of *res judicata*. If the defendant were restricted to record evidence in the presentation of this defense, or if record evidence would always suffice to establish the identity of the two offenses, this function might appear an indispensable one. But everyone knows that the defendant is not confined to record evidence in this regard. And it is probably not overstating the fact

⁸Charles A. Willard, *The Seventeenth Century Indictment in the Light of Modern Conditions*, 24 Harv. Law Rev. 291.

to say that the production of the record alone of the former proceeding will seldom make out a case for the defendant. In fact, the Supreme Court has gone far toward laying the ghost of this supposed function. Answering the contention in *People v. Brady*,⁹ that the statutory form of indictment for practicing the "confidence game" did not state sufficient facts to enable the defendant to interpose the judgment as a bar to a subsequent prosecution for the same offense, the court said: "Under the present practice, whether the indictment is for the same offense as that charged in a former indictment under which there has been a final judgment is not determined by an inspection and comparison of the two indictments, under a plea setting up the former judgment in bar. The defense of former acquittal or conviction may be made under the plea of not guilty, and on the trial the party accused and the particular offense may be shown by parol testimony." It is plain, therefore, that the function which the indictment is crediting with fulfilling in the present respect is one that it does not adequately fulfill. By dispensing with the necessity of specifying all the legal elements of the offense charged, we change nothing in the rules relating to proof of a former acquittal or conviction. The defendant will start by producing the record and follow with parol evidence if the record does not sufficiently establish the identity exactly as he does at present. He may, on occasion, be obliged to resort to parol evidence for something which at present is in the indictment, but the only difference will be one of degree and not of principle.

That the function last referred to is one which the indictment is not constitutionally required to fulfill seems to admit of no doubt. And that specification of the juristic elements of the offense is constitutionally necessary beyond the bounds of reasonable notice for any other purpose cannot well be contended. Although it has been said by the Supreme Court that the legislature cannot dispense with "a statement of the essential elements of the crime," the decisions in the two cases where this expression was used—one of them being *People v. Brady*, *supra*—and the other language employed in the opinions clearly show that what was meant was not the juristic elements, as such, but the elements essential to give the defendant notice of the nature and cause of the accusation, and that the real test of a constitutional accusation is whether or not it gives such notice.¹⁰

Sometimes, indeed, what amounts to reasonable notice to the

⁹272 Ill. 401, 409.

¹⁰*People v. Clark*, 256 Ill. 14; *People v. Brady*, *supra*.

accused is equivalent to a statement of the legal elements of the crime, but in frequent instances there is a wide gap between the two. Take, for example, the statute as to rape.¹¹ By that statute the offense of rape has been committed when a male person over the age of seventeen years has carnally known a female person, not his wife, under the age of sixteen years, with or without her consent. Now the essential elements of the crime, where there has been consent, are: (1) That the defendant had carnal knowledge of a female person; (2) that the female was not his wife at the time of the act; (3) that, at the time, the defendant was more than seventeen years of age, and (4) that, at the time, the female was under the age of sixteen years. Does reasonable notice to the defendant here require that he be apprised of his own age at the time of the offense or that the victim was not then his wife? Yet today an indictment which omits to state either of these two facts will not support a judgment of conviction.¹² Take again the case of perjury committed in the course of a judicial proceeding. Some diminution of the old strictness of allegation has been here effected by statute, but it is still necessary for the indictment to show, at least by a general averment, that the court in which the proceeding was pending had jurisdiction of the subject matter.¹³ That proof of this fact is essential to conviction, no one can gainsay, but does its allegation in any way aid the defendant in preparing for trial? Still again, take the case of an offense whose prosecution would have been barred by the statute of limitations except for the fact that defendant "was not usually and publicly resident within this State" during the whole or part of the limitation period. Does the defendant need to be told of his own absence from the State? Yet, if the date of the offense appears to be prior to the limitation period, it is held, and under existing law, correctly held, that the omission to state the absence invalidates the indictment.¹⁴ If reasonable notice to the defendant be made the operative test, there will thus become unnecessary a class of allegations whose presence does the defendant no more than an academic good and the public a very appreciable amount of harm.

It is this principle of reasonable notice or information which has obtained entrance into the English Indictments Act of 1915,¹⁵ the Massachusetts Act of 1899,¹⁶ and the draft act prepared by Professor

¹¹Sec. 237, c. 38, Hurd's Statutes, 1913.

¹²*People v. Trumbley*, 252 Ill. 29.

¹³*Kizer v. People*, 211 Ill. 407.

¹⁴*People v. Hallberg*, 259 Ill. 502.

¹⁵*The Indictments Act*, 1915, ed. Herman Cohen, London, 1916.

¹⁶Revised Laws, 1902, c. 218.

Mikell of the University of Pennsylvania and presented in the report of Committee E of the American Institute of Criminal Law and Criminology for 1914.¹⁷ The English act contains nine sections laying down broad lines to be worked out in detail by the rule committee which it appoints. By the central provision of the act, "every indictment shall contain, and shall be sufficient if it contains, a statement of the specific offense or offenses with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the charge."¹⁸ This is supplemented by the rules adopted under the act, thus: "A count of an indictment shall commence with a statement of the offense charged, called the statement of offense."¹⁹ The statement of offense shall describe the offense shortly in ordinary language, avoiding as far as possible the use of technical terms, and *without necessarily stating all the essential elements of the offense*, and if the offense is one created by statute, shall contain a reference to the section of the statute creating the offense.²⁰ After the statement of the offense, particulars of the offense shall be set out in ordinary language in which the use of technical terms shall not be necessary."²¹ As illustrations of what is intended to be effected may be cited the following forms contained in the appendix to the rules, each being preceded with the title of the court and the allegation "A. B. is charged with the following offense (or offenses):" In case of murder—"Statement of Offense: Murder. Particulars of Offense: A on the.....day ofin the county of.....murdered J. S." In case of receiving stolen goods—"Statement of Offense: Receiving stolen goods contrary to Section 91 of the Larceny Act, 1861. Particulars of Offense: A. B. on the.....day of.....did receive a bag, the property of C. D., knowing the same to be stolen." In case of arson—"Statement of Offense: Arson, contrary to section 3 of the Malicious Damage Act, 1861. Particulars of Offense: A. B. on the.....day of.....in the county of..... maliciously set fire to a house with intent to injure or defraud."²²

The Massachusetts Act provides that, in addition to a caption, the indictment shall contain "a plain and concise description of the act which constitutes the crime or the appropriate legal term descrip-

¹⁷Journal of Criminal Law and Criminology, 5, 827.

¹⁸Sec. 3 (1).

¹⁹Rule 4 (2).

²⁰Rule 4 (3).

²¹Rule 4 (4).

²²Indictments Act, 1915, ed. Cohen, pp. 30, 33, 35.

tive of such act without a detailed description thereof," that "the words used in a statute to define a crime or other words conveying the same meaning, may be used," ²³ and that "the circumstances of the act may be stated according to their legal effect, without a full description thereof." ²⁴ It also provides that "the court may upon the arraignment of the defendant, or at any later stage of the proceedings, order the prosecution to file a statement of such particulars as may be necessary to give the defendant reasonable knowledge of the nature and grounds of the crime charged, and if it has final jurisdiction of the crime shall do so at the request of the defendant, if the charge would not be otherwise fully, plainly, substantially and formally set out." ²⁵ "Fully, plainly, substantially and formally," it may be parenthetically observed, is the phrase used in the Massachusetts Bill of Rights as characterizing the manner of accusation to which the defendant is entitled. ²⁶ It further provides that "if in order to prepare his defense, the defendant desires information as to the time and place of the alleged crime or as to the means by which it is alleged to have been committed, or more specific information as to the exact nature of the property described as money, or, if indicted for larceny, as to the crime which he is alleged to have committed, he may apply for a bill of particulars as aforesaid." Forms of indictment appropriate under the act are the following: *Murder*: "That A. B. did assault and beat C. D., with intent to murder him, by striking him over the head with an ax, and by such assault and beating did kill and murder C. D." *Receiving stolen property*: "That A. B. one watch of the value of.dollars, the property of one C. D., then lately before stolen, did buy, receive and aid in the concealment of, the said A. B. well knowing the property to have been stolen as aforesaid." *Arson*: "That A. B. maliciously did burn the dwelling house of C. D. in.County." ²⁷

In Professor Mikell's draft act, it is similarly provided that "(1) the indictment may indicate the offense by using the specific name given to the offense by the common law or by a statute" or "(2) that the indictment may indicate the offense by stating so much of the offense either in terms of common law or of the statute defining the offense, or in terms of substantially the same meaning, as is sufficient to give the court notice of what offense is charged." ²⁸ Further, that

²³Sec. 17.

²⁴Sec. 18.

²⁵Sec. 39.

²⁶Art. I, Sec. XII.

²⁷Schedule of Forms, Revised Laws, 1902, Vol. II, pp. 1847, 1850, 1851.

²⁸Sec. 5.

when an indictment indicates an offense in either of these two ways, "but does not inform the accused of the nature and cause of the accusation against him, the prosecuting officer may of his own motion and shall, when ordered by the court, which in all cases shall so order at the request of the accused, file a bill of particulars as may be necessary to give the accused information of the nature and cause of the accusation against him."²⁹ "Nature and cause of the accusation," it is to be noted, is the more common expression definitive of the defendant's constitutional right to information. In addition, the court is given power to require a bill of particulars giving the defendant "information desirable for the defense of the accused upon the merits of the case."³⁰ Under this act, an indictment for murder not supplemented by bill of particulars would contain the words "A. B. murdered C. D."; an indictment for arson, "A. B. committed arson by burning the dwelling house of C. D."; an indictment for robbery, "A. B. robbed C. D."³¹

It will be seen that these three acts agree in providing for (1) a designation of the offense, and (2) such particulars as will reasonably convey information to the defendant of the offense charged. The method is substantially that of charge and specification long obtaining in the practice of military tribunals. Two differences, however, appear between the English act on the one hand and the Massachusetts act and the draft act on the other. The first is a difference in form, namely, that the English act contemplates the inclusion of the particulars in the indictment, while, under the other two, these are primarily matters for bills of particulars. But it would be perfectly practicable under the Massachusetts act to draw the indictment in such wise as to dispense with the necessity of a bill of particulars, if such a course was deemed desirable. As to the draft act, the committee say: "There is nothing in the act to prevent the stating of the transaction³² in the first pleading and the expectation is that * * * such information will usually be found in the first pleading."³³ Moreover, under the draft act, the bill of particulars is taken as amending the indictment.³⁴ The second difference is one of substance, and is due to the constitutional provisions for notice to the accused, which must be taken into consideration by American legislation. The Eng-

²⁹Sec. 8.

³⁰Sec. 8.

³¹Sec. 7.

³²"Transaction" is the name given in the act to the subject matter of the specification, "offense" is the name given to the subject matter of the charge.

³³Journal of Criminal Law and Criminology, 5, 828.

³⁴Sec. 8.

lish act proceeds on the theory, as, of course, it may, that, when the indictment has been drawn in accordance with its provisions and those of the rules, the accused has a right to no more. It does not touch the pre-existing power of the court to order a bill of particulars, but this remains, as before, discretionary. The Massachusetts act recognizes the right of the defendant to have the charge "fully, plainly, formally and substantially described," as required by the Bill of Rights, and, while dispensing with the necessity of satisfying this right in the indictment itself, makes it the duty of the State to accomplish this purpose, on the defendant's request, by bill of particulars. If he makes no request, his constitutional right will be deemed to have been waived. The same is true of the draft act, except that here the constitutional provision kept in view is the one contained in our own Bill of Rights, namely, that the defendant shall be informed of the "nature and cause of the accusation." Up to the point of being so informed the defendant has a right to have the offense described either by the indictment alone or by the indictment and bill of particulars. Beyond this point, the acts, in varying terms, both provide for the discretionary granting of a bill of particulars.⁸⁵

If we should resolve upon the introduction of the salutary principle contended for, that of reasonable notice or information to the accused, pattern and precedent are thus ready to hand.

Along with this principle, and the consequent discarding of the doctrine that the indictment shall necessarily set forth the legal elements of the crime, measures are required to counteract that second doctrine which has contributed so seriously to reversals of criminal convictions—the doctrine relating to the certainty requisite in allegation. We shall have to take care that in conveying information to the accused, the averments shall not be subjected to the over-nice tests of the present standard. The rule is a well settled one in this State, that the highest degree of certainty is required in an indictment.⁸⁶ Sometimes this is spoken of as "reasonable certainty,"⁸⁷ as "a reasonable degree of certainty, using the term 'certainty' in its common law sense."⁸⁸ But the difference of name has little effect in the result. What we have with us is still Coke's "certainty to a certain intent in general."⁸⁹ Illustrations of the pernicious working of the rule may

⁸⁵Massachusetts Act, Sec. 39; Draft Act, Sec. 8.

⁸⁶*Wilkinson v. People*, 226 Ill. 135; *People v. Hallberg*, 259 Ill. 502.

⁸⁷*Gunning v. People*, 189 Ill. 165.

⁸⁸*Prichard v. People*, 149 Ill. 50, 55.

⁸⁹See Stephen, *History of the Criminal Law of England*, I, 281.

be found without much delving. In *Cochran v. People*,⁴⁰ a prosecution for abortion, the conviction was set aside because the indictment averred that the defendant "did administer and use a certain instrument on one S. R.," without stating the manner of its use. In *Gunning v. People*,⁴¹ where the defendant had been convicted for his offer, while acting as assessor of the Town of South Chicago, to receive a bribe in consideration of reducing the assessment on certain real estate described in the indictment by a lot and block number "in the original Town of Chicago, together with building thereon known as the Reliance Building * * * in the County of Cook," a reversal ensued because the indictment did not allege that the premises were situated in the Town of South Chicago. In *Prichard v. People*,⁴² the indictment charged that the defendant, Joseph Ferguson Prichard, being married to one Eliza Ann Sweet, known as Eliza Ann Prichard, married one Virginia M. Lewis, "well knowing that the said Eliza Ann Ferguson, his former wife, was then alive." Here the absence of a direct allegation that Eliza Ann Prichard was then living and the obviously inadvertent substitution of the name "Eliza Ann Ferguson" for "Eliza Ann Prichard" were held fatal to the conviction. Other examples of this same default in certainty are the failure to set out a literal copy or aver the copy set out to be a literal copy of an instrument alleged to be forged,⁴³ the failure to negative a statutory exception,⁴⁴ the failure to specify the coins or bills which were the subject of a pecuniary larceny,⁴⁵ the failure to specify the juristic nature of the owner of stolen goods where that owner is other than an individual.⁴⁶ Here, too, belongs the matter of technical terms. "Certain technical terms," says a writer experienced in criminal practice, "must be borne in mind constantly in the preparation of the indictment. If the statute says that a thing 'wilfully and maliciously' done is an offense, the statutory words must be averred and to omit them is fatal. This applies to 'corruptly,' 'burglariously' and many other words used by the statute in the specific offense."⁴⁷

To attain fully the object in view—that of making it clear that the "highest degree of certainty" test is once and for all laid aside—will require a number of detailed rules. At the outset will be useful

⁴⁰175 Ill. 28.

⁴¹189 Ill. 165.

⁴²149 Ill. 50.

⁴³*People v. Tilden*, 242 Ill. 536.

⁴⁴*Lequat v. People*, 11 Ill. 330.

⁴⁵*People v. Hunt*, 251 Ill. 446.

⁴⁶*People v. Brander*, 244 Ill. 26.

⁴⁷Thomas Marshall, *The Preparation of Indictments*, 6 Ill. Law Rev. 162.

some such general rule as the following from the draft act: "No indictment or bill of particulars is invalid or insufficient for the reason merely that it alleges indirectly or by inference, instead of directly, any matters, facts and circumstances connected with or constituting the offense, provided that the nature and cause of the accusation can be understood by a person of common understanding."⁴⁸ This might well be associated with the English rule generally applicable to description that "it shall be sufficient to describe any place, time, thing, matter, act, or omission * * * in ordinary language in such a manner as to indicate with reasonable clearness the place, time, thing, matter, act or omission referred to."⁴⁹

Following general provisions of this character would come other rules providing that certain requirements due to specific application of the present test should no longer obtain. It will have to be considered, for example, how far we may dispense with the allegation of the *means of commission*. In England, it was provided by statute, as long ago as 1861, that in cases of murder the manner or means of causing the death need not be set forth.⁵⁰ This, likewise, is the present rule in something like twenty American states. Under the Massachusetts act⁵¹ and the draft act,⁵² the means in no case need be stated unless they are essential to the designation of the crime. Under the former, as already seen, they are expressly mentioned as the proper subject of a bill of particulars,⁵³ the granting of which, however, would be discretionary where their statement would not be essential to a compliance with the constitutional requirement. There is no such express mention in the draft act, but the general provision as to bills of particulars would permit like information under a like condition.

The matter of *time* and *place* will similarly demand attention. Here the Massachusetts act and the draft act, in harmony with the rule obtaining in England since a statute of 1851,⁵⁴ do not require the allegation of time, except when it is of the essence of the offense. They both apply the like rule to place. Unless otherwise stated the time is taken to be a time before the finding of the indictment, after the act became an offense and within the limitation period, and the place, a

⁴⁸Sec. 30.

⁴⁹Rule 8.

⁵⁰24 & 25 Vict., c. 100, s. 6.

⁵¹Sec. 21.

⁵²Sec. 12.

⁵³Sec. 39.

⁵⁴14 & 15 Vict., c. 100, s. 24.

place within the territorial jurisdiction of the court.⁵⁵ But the granting by bill of particulars of information relating to time and place is governed in each by the same considerations which apply to the means of commission.

Such rules should also be directed to the question of the *description of property*. The English rule in this regard is that the description "shall be in ordinary language, and such as to indicate with reasonable clearness the property referred to."⁵⁶ In particular, the enumeration of so many coins, so many bills, etc., in describing money should cease to be necessary, in any case. This requirement likewise was done away with in England in 1851.⁵⁷ There, consequently, it is no new thing "to describe coin or bank notes as money without specifying any particular coin or bank note."⁵⁸ The draft act has a provision to the same effect and extends the principle to every species of negotiable security.⁵⁹ And, subject to the express statutory reference to a bill of particulars in such instance, the same is true of the Massachusetts act.⁶⁰ By the draft act, moreover, non-negotiable securities may be described in the indictment as "funds."⁶¹

The connected questions of *value* and *ownership* should also receive attention. In England, by the act of 1851, already mentioned, it was provided that the absence of a statement of price or value should not vitiate the indictment except where price or value is of the essence of the offense.⁶² This particular provision is repealed by the new legislation, but in the rules it is substantially re-enacted by the provision that value need not be stated except where the offense depends "on any special value" of property.⁶³ The other two procedures in question concur in this principle.⁶⁴ With a rule of this sort it would be necessary, for instance, in a charge of larceny to show on what side of the statutory dividing line the value of the property falls. But here it should be possible, as it would be under a provision like those of the Massachusetts act and the draft act, to allege that the value was less or more than fifteen dollars without specifying any amount.⁶⁵ Ownership, under the English rule, is treated

⁵⁵Massachusetts Act, Sec. 20, Draft Act, Secs. 11, 12.

⁵⁶Rule 6 (1).

⁵⁷14 & 15 Vict., c. 100, s. 18.

⁵⁸Archbold's Criminal Pleading, 23 ed., p. 77.

⁵⁹Sec. 21.

⁶⁰Sec. 23.

⁶¹Sec. 21.

⁶²14 & 15 Vict., c. 100, s. 24; Bowen-Rowlands *Criminal Proceedings*, 2 ed., p. 157.

⁶³Rule 6 (1).

⁶⁴Massachusetts Act, Sec. 24; Draft Act, Sec. 14.

⁶⁵Massachusetts Act, Sec. 24; Draft Act, Sec. 14.

on the same basis as value. It is not to be stated except where the offense depends on "any special ownership."⁶⁶ The Massachusetts act similarly provides that if the property is sufficiently described in other respects to identify the act, the name of the owner need not be alleged while the draft act goes perhaps a little farther than either of the others, dispensing with the allegation of ownership except where necessary to indicate the offense.⁶⁷ Under this head would also come a provision solving the difficulty which is presented when, in a case where ownership has to be alleged it is found to be vested in a voluntary society or unincorporated association composed of a large number of members. The English rules reach this by providing that it shall be enough, in such case, to lay the ownership in one of the members "with others," or to use the collective name if there be one.⁶⁸ The draft act adopts the same method "for the purpose of identifying any group or association" generally.⁶⁹ And a further valuable contribution of the draft act in this particular is the provision "that it is not necessary for such purpose of identification to state the legal form of such group or association of persons or any corporation."⁷⁰ The propriety of such a rule is emphasized by recollection of *People v. Brander*,⁷¹ where an indictment charging embezzlement from the "American Express Company, an association," was held insufficient to support a conviction, on the ground that it lacked "any averment of ownership in any person, firm, corporation or other entity that may be the owner of property."⁷²

A further result of the existing test calling loudly for modification is the one which requires that "every indictment for forgery or other crime, the essence of which consists in the publication or fabrication of a written instrument,"⁷³ must not only set out the instrument *in haec verba*, but must profess to so set it out. The case of *People v. Tilden*, exhibits the unfortunate effect of this requirement. There, though the indictment had set forth the instrument apparently in the precise terms proved at the trial, the conviction could not stand because the prefatory allegation used the expression "in words and figures in substance as follows," instead of "in words and figures as follows": There is need of neither part of the requirement. The

⁶⁶Rule 6 (1).

⁶⁷Sec. 15.

⁶⁸Rule 6 (2).

⁶⁹Sec. 19.

⁷⁰*Ibid.*

⁷¹244 Ill. 26.

⁷²P. 32.

⁷³*People v. Tilden*, 242 Ill. 536.

indictment ought to be sufficient if it identifies the instrument. Here the English rule is that "when it is necessary to refer to any document or instrument in an indictment, it shall be sufficient to describe it by the name or designation by which it is usually known or by the purport thereof, without setting out any copy thereof."⁷⁴ In England this change in the common law rule dates from the statute of 1851.⁷⁵ In this country, also, statutes dispensing with the necessity of setting out a copy are to be found in a number of jurisdictions. The Massachusetts act and the draft act likewise render this unnecessary.⁷⁶ Under such a provision, therefore, it would be in the discretion of the court, in the given case, as to whether the accused ought to be furnished with a copy of the instrument in a bill of particulars, but the inclusion of the copy in the indictment would under no circumstances be essential to the validity of the judgment.

It should be further provided that a statutory exception need not be negatived by the indictment. The distinction between exception and provisos so often depends upon mechanical considerations, that no prejudice will be worked to the defendant by relegating, in pleading, all exceptions to the present status of provisos. Under the existing rule the validity of a conviction may turn upon a tenuous question of statutory construction in nowise affecting the merits of the case.⁷⁷ This change has been effected by the English rules⁷⁸ and the draft act.⁷⁹ The Massachusetts act after recognizing what, in part, at least, is the rule obtaining in this State that there need be no negativing of "an excuse, exception or proviso which is not contained in the enacting clause * * * or which is stated only by reference to other provisions of the statute, * * * unless it is necessary for a complete definition of the crime," distinctly provides that "if a statute which creates a crime permits an act which is therein described to be performed without criminality, under stated conditions, such conditions need not be negatived."⁸⁰

By the same token, it should not be incumbent upon the State to negative in the indictment an exception to the statute of limitations. Logically, initial proof that the prosecution is barred should be for the defense, as in common law causes, and the indictment ought to be

⁷⁴Rule 8.

⁷⁵14 & 15 Vict., c. 100, ss. 5, 7; 24 & 25 Vict., c. 98, ss. 42 and 43.

⁷⁶Massachusetts Act, Sec. 22; Draft Act, Sec. 22.

⁷⁷Sec. *e. g.* *People v. Butler*, 268 Ill. 635.

⁷⁸Rule 5 (2).

⁷⁹Sec. 28.

⁸⁰Sec. 37.

sufficient if it shows a *prima facie* case apart from the question of time. There is really no good reason why a defendant who seeks to shield himself under this defense should not be required to plead the statute. The three procedures under discussion seem to preserve the practice in this regard as it stands with us, but the rule suggested has been sanctioned by the Supreme Court of the United States,⁸¹ as well as by the courts of South Carolina,⁸² Mississippi,⁸³ and Colorado.⁸⁴ In the Mississippi case passing on this question, it was said: "A statute of limitations is never part of an offense, but always a matter of defense, nor is any allusion to time contained in our statute relative to grand larceny. It will be time enough, therefore, for the district attorney to plead the exceptions to the statute when the statute itself has been pleaded by the accused. No sound rule of pleading can require him, in preferring the indictment, to anticipate the defense, and negative it by setting forth the facts which render it unavailing."⁸⁵

Another suggestion which commends itself is that concerning allegations in the alternative. Although the rule is that "where a statute forbids several things in the alternative, it is usually construed as creating but a single offense, and the indictment may charge the defendant with committing all the acts using the conjunction 'and,' where the statute uses the disjunctive 'or,'"⁸⁶ yet cases may arise where such construction cannot be put upon the statute.⁸⁷ It should be allowable, therefore, to charge the act or omission in the disjunctive. The same thing is true of the intent in cases where the act may have been done with one of several different intents. Allegations in the alternative are provided for by all three procedures under discussion. By the Massachusetts act "different means or intents,"⁸⁸ and, by the draft act, "different acts, means, intents or results,"⁸⁹ may be alleged in the alternative, while under the English rules, it is "acts, omissions, capacities or intentions or other matters stated in the alternative in the enactment" which may be thus charged.⁹⁰

To these topics, therefore, with others which experience and

⁸¹*United States v. Cook*, 17 Wall. 168.

⁸²*State v. Howard*, 15 Rich. Law (S. C.) 274.

⁸³*Thompson v. State*, 54 Miss. 740.

⁸⁴*Harding v. People*, 10 Colo. 387; *Packer v. People*, 26 Colo., 306.

⁸⁵*Thompson v. State*, *supra*, p. 744.

⁸⁶*Blemer v. People*, 76 Ill. 265.

⁸⁷See Bishop *New Criminal Procedure*, 2 ed., s. 585, *et seq.*

⁸⁸Sec. 31.

⁸⁹Sec. 29.

⁹⁰Rule 5 (1).

study may suggest, should be addressed the rules auxiliary to the purpose of preventing "reasonable notice" from being confounded with that "reasonable certainty of allegation" which confessedly implies the highest degree of certainty. Some of the changes recommended might be held not fully to consist with the constitutional requirement, but as to these, the burden can be cast upon the defendant, as in Massachusetts, to demand such further statement as the constitutional words may entitle him to. But in most cases the change can be made without trenching upon the constitutional provision in the original statement. In most cases, that is to say, with the change effected, the indictment will sufficiently state the "nature and cause of the accusation" without giving the defendant any absolute right to amplification or supplement. Though, in this State, we cannot pretend to be aught but laggards in the march of procedural reform some steps have been already taken in the direction indicated, some legislative precedent furnished for cutting down the common law doctrine of certainty in the indictment. For one thing, there is the statute with reference to arson, under which it is sufficient to charge the burning of a "building the property of another,"⁹¹ without describing the building as would be required by the common law rule. In giving this construction to the statute, the Supreme Court recognized the principle which justified all such changes. The defendants said the court "were as well informed of the particular offense with which they were accused as if the indictment had described the building. If the indictment should be held insufficient, it would not be because, as a matter of fact, plaintiffs in error were not apprised of the particular offense with which they were charged. It would have to be because the indictment did not describe the building with the 'technical niceties' of the common law precedents. It would not be because plaintiffs in error were injured or suffered any prejudice because the building was not particularly described, but because the indictment did not meet the technical requirements of the common law rule, founded upon good reasons at the time of its adoption, but which reasons do not now exist in this State."⁹²

Then, again, there is the statute as to embezzlement which has made it sufficient in all such cases to allege generally in the indictment an embezzlement, fraudulent conversion, or taking with intent of funds of a person, bank, incorporated company, or co-partnership to a certain value or amount, "without specifying any particulars of such

⁹¹Sec. 19, Criminal Code, Hurd's Statutes, 1913, p. 800.

⁹²*People v. Covitz*, 262 Ill. 514, 520-1.

embezzlement.”⁹³ In the absence of this rule, said the Supreme Court, “it would be difficult to make the proof and the allegations of the indictment correspond.”⁹⁴ And in a later case, the court, declining to hold erroneous the refusal of the lower court to grant a bill of particulars, speaks of the statutory indictment as “sufficiently specific to advise the plaintiff in error of the charges he was required to meet.”⁹⁵

Another statute of the sort is that relating to perjury and subornation of perjury, which, though preserving in a milder form than existed at common law the requirement before referred to that the court wherein the false oath was made shall be shown to have jurisdiction of the subject matter, does relieve the pleader entirely from other consequences of the common law rule, that is to say, from setting forth the proceedings at large, the commission and authority of the court and the form of the oath, with its mode of administration.⁹⁶

But the furthest step which has been taken in this direction is the statute in relation to the “confidence game.” The form of charge here given the stamp of approval is that the defendant “did on, etc., unlawfully and feloniously obtain (or attempt to obtain, as the case may be) from A. B. his money (or property) by means and by use of the confidence game.”⁹⁷ The history of decision under this enactment may be found in the case, already mentioned in another connection of *People v. Brady*.⁹⁸ Originally attacked in 1868, in *Morton v. People*,⁹⁹ the provision has repeatedly been held not to violate the constitutional requirement. In *People v. Clark*,¹⁰⁰ the conclusion was reached that the indictment need not describe the money so obtained or state its amount, and *People v. Brady* held valid an indictment for obtaining property which stated neither the description nor the value of the property.

This line of cases in particular, affords promise that alterations of the kind under review may be in large part accomplished in the contents of the accusation without impairing the right to knowledge of its nature and cause. In *People v. Clark*, *supra*, the court refers with approval to the Michigan case of *Brown v. People*,¹⁰¹ as holding “that the provision of the constitution was not intended to pre-

⁹³Sec. 82, Criminal Code, Hurd's Statutes, 1913, p. 820.

⁹⁴*Ker v. People*, 110 Ill. 627, 647.

⁹⁵*People v. O'Farrell*, 247 Ill. 44, 50.

⁹⁶Sec. 227, Criminal Code, Hurd's Statute, 1913, p. 850.

⁹⁷Sec. 98, Criminal Code, Hurd's Statutes, 1913, p. 825.

⁹⁸272 Ill. 401.

⁹⁹47 Ill. 468.

¹⁰⁰256 Ill. 14.

¹⁰¹29 Mich. 32.

vent the legislature from dispensing with matters of form only in the description of an offense, nor with any degree of particularity or specifications which did not give to the defendant substantial and reliable information of the particular offense intended to be charged and without which he would receive substantially the same information." And in *People v. Brady, supra*, it was said: "The indictment here charges the accused obtained 'the property' of Douglas Flake by means of the confidence game. That informed him of the nature and cause of the accusation and was sufficient. * * * Defendants were in no way prejudiced because the indictment did not aver the property to be a stock of goods. Of course, it can be imagined that because there is real property and several kinds of personal property, a defendant might not know which kind of property he was charged with obtaining, but it is hardly imaginable that when the person from whom he was charged with obtaining it is named, he would not know the kind or character of the property. Legislative acts should not be held invalid upon any such supposititious theory. * * * The object of the constitutional provision is notice to the accused, and when the statute so individuates the offense that an indictment in its language is notice to the defendant of the nature and cause of the charge and what he is really to be tried for it is sufficient."¹⁰²

No doubt, in the light of the arguments advanced in the minority opinion *People v. Brady*, was a departure in some measure from the older standards, but it has definitely opened a way to rationalization of the indictment.

The propriety granted of a set of rules such as indicated, the question remains as to the manner, extent and effect of objections to the accusation. Under the English act, "notwithstanding any rule of law or practice, an indictment shall subject to the provisions of this Act and not be open to objection in respect of its form or contents if it is framed in accordance with the rules under this act."¹⁰³ As the new act does not deal with the mode of objection, failure to comply with the act and rules in the allegations of the indictment would be taken advantage of either by demurrer or motion to quash. But note this further provision: "When before trial or at any stage of a trial it appears to the court that the indictment is defective, the court shall make such order for the amendment of the indictment as the court thinks necessary to meet the circumstances of the case, unless having regard to the merits of the case, the required amendments

¹⁰²Pp. 406, 407.

¹⁰³Sec. 3 (2).

cannot be made without injustice. * * *"^{103a} In most instances, therefore, the objection would have no serious result, for wherever it could be obviated without actually prejudicing the defendant an amendment would be permitted. Presumably, the rule in question would not allow any amendment after verdict, but even before the act, partly no doubt because of the attitude of the courts, partly because of aid by verdict, common law and statutory,¹⁰⁴ the situation was such that writing in 1910 a learned writer could say that "a motion in arrest of judgment is rarely successful."¹⁰⁵ And since in no case need there be interference on the part of the Court of Criminal Appeal "if they consider that no substantial miscarriage of justice has occurred,"¹⁰⁶ it is plain that there is slight margin, under the English practice for the kind of objection with which we are too familiar.

The Massachusetts act contains no provision authorizing amendment of the indictment. But, under its theory, as previously explained, the same purpose is accomplished by bills of particulars. Even though the indictment does not "fully and plainly, formally and substantially" inform the defendant of the charge, yet if it complies with the statutory provisions, the defendant's remedy is not by demurrer or motion to quash, but by application for bill particulars. "Of course," as said by the Supreme Judicial Court, "the bill of particulars cannot enlarge the scope of the indictment. It cannot specify a charge not covered by the indictment. Its only purpose is to specify more particularly the acts constituting the offense."¹⁰⁷ The great virtue of this plan, however, is that upon failure to move for a bill of particulars it forecloses all objections relating to the lack of certainty or lack of specification of the elements of the crime. If the court should refuse a bill of particulars granting information to which the defendant has an absolute right in order to be constitutionally informed of the charge, then this would be set right on appeal. For example, in *Commonwealth v. Sinclair*,¹⁰⁸ a prosecution for causing death with intent to produce a miscarriage, the upper court went to what would seem the unnecessary extent of holding that the defendant was entitled to a new trial, for the refusal of the court below to order particulars of the instrument which the defendant was charged with using, on the ground that the description of the instrument was substantially essen-

^{103a}Sec. 5 (1).

¹⁰⁴Archbold, *Criminal Pleading*, 23 ed., pp. 84, 226.

¹⁰⁵Bowen-Rowlands, *Criminal Proceedings*, 2 ed., p. 274.

¹⁰⁶Sec. 4 (1), Criminal Appeals Act, 1907; Boulton, *Criminal Appeals*, p. 14.

¹⁰⁷*Commonwealth v. Kelly*, 184 Mass. 320.

¹⁰⁸195 Mass. 100.

tial to the validity of an indictment for the offense in question before the passage of the act. But in the same case it was held that a motion to quash for the lack of the description had been properly overruled. The motion to quash or demurrer, therefore, as well as the motion in arrest, it would appear, can only operate upon the original indictment, in the simple form to which it is reduced, upon the charge, that is to say, as distinguished from the specification, and the charge alone, if properly stated, will support the judgment.

In this regard the draft act, proceeding on the same plan, is more explicit and effectual. To quote from the committee's report: "The first pleading on the part of the State * * * need only state the offense which is to be proved against the person accused. If this be stated such pleading is sufficient to give the court jurisdiction, and if the accused requires no further information, it is sufficient to warrant and sustain a trial and judgment."¹⁰⁹ The indictment is "*valid*," if it indicates the offense in the general way already pointed out. It is "*valid and sufficient*" if in addition to so indicating the offense it "contains so much detail of the circumstances of the transaction and such particulars as to the person (if any) against whom and the thing (if any) in respect to which the offense was committed as are necessary to identify the transaction and to give the accused reasonable notice of the facts."¹¹⁰ Further provision is that no indictment which indicates the offense in the general way mentioned "shall be quashed, set aside or dismissed, nor shall any demurrer thereto be sustained on the ground that it fails to identify the transaction, but the accused shall in such cases be entitled to a bill of particulars."¹¹¹ The only case apparently in which a bill of particulars can be looked to on motion to quash is where it discloses that the statute of limitations has run, and here the prosecution is permitted to file a new bill if it can show otherwise.¹¹² Moreover, it is expressly stated that no indictment is to be held invalid because of "any defect, imperfection or omission in the manner of charging the offense, or describing the transaction, provided that the indictment indicates an offense" as before prescribed. Amendment of the indictment is permitted. "The court may at any time amend the indictment in respect to any such defect, imperfection or omission,"¹¹³ and in case the defendant in the opinion of the court, 'has been actually misled and prejudiced in his

¹⁰⁹Journal of Criminal Law and Criminology, 5, 828.

¹¹⁰Sec. 6.

¹¹¹Sec. 38.

¹¹²Sec. 9.

¹¹³Sec. 38.

defense upon the merits by any such defect, imperfection or omission' there may be a postponement of the trial." ¹¹⁴ Finally, there occurs this significant clause: "No motion made after verdict nor writ of error or appeal based upon any such defect, imperfection or omission * * * shall be sustained unless it be affirmatively shown that the defendant was, in fact, prejudiced in his defense upon the merits and a failure of justice has resulted." ¹¹⁵

The question of *variance* is also important in the present connection. The new English act contains no provision on this subject. But by legislation, dating back to 1848 and 1851, a curative amendment is in England permitted where the variance relates to written or printed matter, ¹¹⁶ and in all cases where it relates to place, name or description of the owner of property or the person injured, description of ownership of property, or description of any matter or thing mentioned, is not material to the indictment, and cannot prejudice the accused in his defense on the merits. ¹¹⁷ The amendment may occur at any time before the case goes to the jury, and, if necessary, the court may postpone the trial. ¹¹⁸ One amendment, however, is all that may be made. ¹¹⁹

By the Massachusetts act, "if there is a material variance between the evidence and the bill of particulars, the court may order the bill of particulars to be amended, and may postpone the trial." ¹²⁰ Apart from this amendment of the bill of particulars, there is to be no acquittal of the defendant on the ground of variance, "if the essentials of the crime are correctly stated, unless he is thereby prejudiced in his defense." ¹²¹ Precisely what is here meant by "essentials of the crime" is open to doubt. To interpret the expression as meaning the "legal elements of the crime" would be in conflict with the principle of the act. It would be more logical to treat it as meaning the "essentials" of the crime necessary to satisfy the constitutional requirements. In either event, it is a provision calculated greatly to lessen unmeritorious objections on the present score.

Preserving a like attitude to that which it has toward defects in the indictment, the draft act offers even less room than the Massachusetts act for objections because of variance. If the indictment identifies

¹¹⁴Sec. 38.

¹¹⁵Sec. 38.

¹¹⁶11 & 12 Vict., c. 46, s. 4.

¹¹⁷12 & 13 Vict., c. 45, s. 10.

¹¹⁸*Ibid.*; Bowen-Rowlands, *Criminal Proceedings*, 2 ed., pp. 244, 245.

¹¹⁹Archbold's *Criminal Pleading*, 23 ed., p. 296.

¹²⁰Sec. 39.

¹²¹Sec. 35.

the offense in the general way before described, no variance between the allegations identifying the transaction contained in the indictment or bill of particulars whether amended or not, and the evidence shall be ground for acquittal, but the court is given full power at any time to amend so to conform the allegations to the evidence.¹²² As in the case of a defect in the indictment, if the defendant, in the opinion of the court has been "misled and prejudiced in his defense upon the merits" by such variance, the court is given power to postpone the trial.¹²³ So, too, no objection on the score of variance after verdict will be sustained unless prejudice in defending upon the merits and a failure of justice are affirmatively shown.¹²⁴

These three procedures, then, furnish a source from which we can draw in a recasting of the present rules relating to the indictment. As between the English act and the other two, the operative principle of the latter seems to commend itself for adoption. The general charge, with its minimum requirements, supplemented by specification in the indictment itself or in a bill of particulars, is not only the more flexible procedure of the two, but is one which is admirably adapted to meet the demands of constitutional definition.

That we could constitutionally go as far as Massachusetts seems undeniable, for as has been seen, the provision in the Massachusetts Bill of Rights appears a more formidable obstacle than our own. If the plan adopted complies with the requirement that the defendant shall have the charge described to him "fully, plainly, substantially and formally," as has been repeatedly decided by the Supreme Judicial Court,¹²⁵ it should certainly not offend the requirement that he be informed of the "nature and cause of the accusation." And in circumscribing the boundaries of that description to which the defendant is entitled as a matter of constitutional right, the cases before mentioned, and, particularly *People v. Brady*, would seem to augur our ability to go considerably further than Massachusetts has ventured.

A statute, allowing amendments to the indictment would be a valuable adjunct. The constitutional question here involved, however, is one that demands an independent consideration. But, judging by the current of decision in other states, a statute could be validly passed providing, at least, for the cure by amendment of variance in matters of description not touching the essence of the charge either

¹²²Sec. 38.

¹²³Sec. 38.

¹²⁴Sec. 39.

¹²⁵*Commonwealth v. Snell*, 189 Mass. 12; *Commonwealth v. Sinclair*, 195 Mass. 100; *Commonwealth v. Farmer*, 218 Mass. 507.

before or at the trial.¹²⁶ Once we trenched on the domain of substance, however, the absence of prejudice to the defendant would probably not be regarded as a sufficient reason for supporting the statute.¹²⁷ And while it is possible that a statute allowing amendment of the indictment to the extent contemplated in the draft act would be approved, it is quite clear that, without a constitutional amendment, we should be compelled to forego any such comprehensive provision as that of the new English act.

Improvement of criminal pleading thus finds its chief task in renovation of the rules relating to the accusation. But it ought not to stop there. If the requirement of reasonable notice should obtain in favor of the accused, it should also obtain, within limits, at least, in favor of the State. Under the existing practice in Illinois, which permits any defense in bar to be shown under the plea of not guilty, there is no such thing as notice, reasonable or otherwise, of the defense which the State is called upon to meet. To begin with, the common law rule requiring *former conviction* or *acquittal* to be the subject of a special plea, should be restored in principle. The defense of *insanity* at the time of the offense ought to be specially stated. This is already required in a number of jurisdictions. As appears from the statutory provisions collected in the report of Committee B of the American Institute of Criminal Law and Criminology for 1911,¹²⁸ New York, Alabama, Louisiana and Washington all demand that the State be given notice of an intended defense of insanity. Consistently with the recommendation that the State be exempted from negating an exception to the *statute of limitations*, this defense should also be specially pleaded. *Self defense* should be similarly treated. And finally, the guilty defendant should be withdrawn from the shelter of that classic bulwark—the defense of *alibi*—by requiring that if an accused proposes to show that he was not present at the scene of the crime he must apprise the State to that effect. If the indictment does not state the time of the offense, this information can be obtained by applying for a bill of particulars. The suggestions as to self defense and alibi come from the criminal procedure of Scotland, in which these defenses, as well as the defense of insanity at the time of the offense, or that the accused was asleep at the time of the offense, or

¹²⁶ Bishop, *New Criminal Procedure*, s. 96, *et seq.*; 22 Cyc. 434, *et seq.*; 1 Encyc. Pl. & Pr. 695 *et seq.*

¹²⁷ See *State v. Startup*, 39 N. J. L. 423.

¹²⁸ Journal of Criminal Law and Criminology, 3, 890; 4 *id.* 67.

that the crime was committed by another person named, must be specially notified to the prosecution.¹²⁹

So far as the defenses of former jeopardy and statute of limitations are concerned, it would seem more in accord with sound principle to make these the subject of special pleas, as were former acquittal and conviction under the common law practice. Notice of the other defenses mentioned, viz.: Insanity, self-defense and alibi should more appropriately come by way of a written specification under the plea of not guilty, as is now the rule in New York with reference to insanity. But the allegations of every such plea or notice should be tested not by the common law rule of certainty applicable to pleas, but by the same criterion as that which should be applied to the accusation; that is to say, reasonable notice to the opposite party. The degree of explicitness entailed by the test will vary with the defense. In the case of former jeopardy an indication of the former proceedings upon which the defendant relies would in most instances suffice. A plea of the statute of limitations would sufficiently show the defense by a statement that more than the statutory period has elapsed since the commission of the crime. Insanity and self-defense would require no more than a brief indication that these defenses were to be relied on. In the case of alibi, however, the usefulness of the notice would largely depend upon the defendant stating where he was at the time of the offense. While requiring this might at first sight make it appear that we were holding the defendant to a greater degree of specification than the State, there is here ample reason for insisting that he furnish the information in question, for the defendant, if any one, absolutely knows where he was and what he was doing when the crime was being committed. There is a wide difference between specification here and specification, for example, of the manner and means of a murder. In the Scottish practice notice of self-defense is accordingly in general terms, while the notice of alibi states particularly where and in whose company the accused was on the occasion of the offense.¹³⁰

Pleas and notices of this character should be amendable in furtherance of justice on substantially the same terms as the indictment or bill of particulars under the indictment ought to be, so that no fault in their structure shall serve to prejudice the defendant. If such an amendment made at the trial would prejudicially surprise the State,

¹²⁹Renton and Brown, *Criminal Procedure according to the Law of Scotland*, p. 73; Macdonald, *Criminal Law of Scotland*, 3 ed., p. 424.

¹³⁰Renton and Brown, *op. cit.*, p. 319.

trial would preserve the balance of fairness between the State and the accused.

By the requirement of notice in such cases, and possibly in other instances, we place the State on an approximately equal basis with the then a provision enabling the court, in that event, to postpone the defendant in respect to advance knowledge of their mutual contentions. Such a thing, to take the most obvious example as a manufactured alibi, will be difficult of accomplishment, for the State upon being notified can immediately take steps to inquire into the truth of the defendant's statement. And, with proper safeguards as to amendment, there is nothing in such a requirement that will lessen in any degree the protection which the law accords, and ought to accord, to an innocent defendant.

For the reform of criminal pleading, as a whole, the data which have thus been reviewed plainly mark the direction which our efforts should take. With their aid may be constructed a system which, retaining the solid virtues of the existing one, will strip it of all that constituted a reproach to our common sense. When we come into possession of such a system, reinforced, as it should be, by those modifications so urgently needed in other departments of our criminal procedure, we shall be able to say, as does a noted English barrister with reference to the new English act: "If hereafter a man who is proved by the evidence to be guilty is acquitted, the law will not be to blame, but the blame will rest with the judge or jury, or both."¹⁸¹

¹⁸¹Sir Harry B. Poland, Introduction to *The Indictments Act*, 1915, ed. Cohen, p. 2.

ORGANIZATION OF PSYCHOPATHIC WORK IN THE CRIMINAL COURTS¹

HERMAN M. ADLER²

Before attempting to outline a plan of organization of psychopathic work in connection with criminal courts, it may be well to make a few statements in regard to the meaning of the term psychopathic and to determine its scope in the present connection.

The word "psychopathic" has come to be used generally of late years to fill a gap in the old nomenclature caused by the widening field of activity of the psychologists and psychopathologists.

The old distinctions between sanity and insanity have lost their former clear cut, sharply dividing feature. Whatever the legal distinctions may be, the decision in the individual case must rest upon the testimony of experts in mental disease. Even though the questions of rights, and more especially of responsibility in the legal sense, have not been affected materially by the changes in our attitude toward delinquency, the increase in the number of cases dealt with by the courts in which, while the question of insanity could not seriously be considered, the existence of an abnormal mental state was clearly recognizable, demands special consideration.

This group of cases, which represents a very large proportion of cases disposed of in the criminal courts, could not be satisfactorily dealt with under the older conceptions of insanity. A term to designate this group was necessary which was wider in scope than any of the older classifications and which yet included the latter. A further consideration, namely, that of avoiding as much as possible the stigma attaching to such terms as lunacy or insanity, influenced this choice.

The term "psychopathic" was finally adopted independently by various communities to satisfy these requirements. This term is broad enough to include variations from the normal type of the severe grade of insanity or feeble-mindedness as well as those milder forms of mental disorder which often amount to little more than eccentricities of personality.

Even now the term psychopathic in some quarters is discarded for the still broader conception conveyed by the term "mental hygiene." The distinction between these terms is a significant one. The term psychopathic lays the emphasis upon the variation from normality,

¹Read before the Illinois Society of Criminal Law and Criminology, Danville, Ill., May, 1917.

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whereas the term mental hygiene emphasizes the maintenance of mental health.

Whether the one or the other term be preferred it is clear that the very fact that such discussions as the present one are possible indicates an ever increasing tendency on the part of the law to regard the cases brought before the courts for personal or social reasons from the point of view of the physician.

This carries with it certain inevitable obligations which are changing the entire legal procedure in certain classes of cases. To make this clear it may be pointed out that there are two kinds of principles which must be observed in this connection. In the first place we must consider principles that are generally applicable to all individuals in a community; in the second place principles which have a bearing on the treatment of the single individual. Just as the *science* of medicine deals with the general principles of disease phenomena and allows certain generalizations which are applicable more or less to all cases, so the practice of medicine concerns itself primarily with the application of general principles and knowledge to suit the needs of an individual case. The biologist, therefore, is concerned with broad problems of pathology or bacteriology and similar branches of science. He is interested in humanity as a manifestation of organic life.

The physician, on the other hand, is interested primarily in the problems of health of individual human beings. He considers the biological principles only in so far as they enable him to deal with the ailments of his patients. Thus the biologist has no hesitation in laying down the principle that individuals afflicted with inheritable disease should not have offspring.

The physician, on the other hand, while he may subscribe to this as a general principle, rarely will attempt to enforce it in an individual case.

The practical failure of most of the legislation authorizing the sterilization of feeble-minded persons or criminals may be explained by these reflections. Thus in New York a law was enacted a few years ago based on the best dictates of science; a law which in general applicability was sound and progressive.

A board of experts was appointed to select cases from those dependent upon public support for this operation. While they had no difficulty in finding numerous individuals who clearly came under the meaning of this law, it was a practical impossibility to enforce the latter when the details of each case came up for consideration.

These same principles which have been noted in connection with the biologist and the physician are effective in the case of the jurist and the legal practitioner.

The law concerns itself with the problems of the community and it must necessarily be generally applicable. The legal profession, on the other hand, deals with the application of general principles to individual cases. It is, therefore, not sufficient to have broad principles which cover the problems of crime and criminality, but it is necessary also to have sound principles in the administration of the laws as they affect the criminal.

Whether intentionally or not, the tendency in dealing with a specific case to concentrate attention upon the criminal rather than upon the crime is obviously on the increase.

Although the law officially deals chiefly with the "rights" of individuals and groups of individuals, it has, from time immemorial, recognized its obligation in the direction of the prevention of crime, no matter whether in so doing it has paid particular attention to the individual delinquent or to the community.

Punishment, which is prescribed by the Criminal Code and which originally was nothing more than legalized vengeance, has been disguised by a pious subterfuge to appear as a method of correction.

The effect claimed for it, except in capital cases, is that it corrects the evil tendencies in the individual by subjecting him to a bitter experience and in all cases that it serves as a deterring influence upon potential delinquents.

Whatever one may hold in regard to this statement, it is clear that by this method the law is committed not only to the adjudication of rights but to treatment of the offender whether actual or prospective.

In other words, there is inherent in this principle the same point of view which actuates the physician to undertake the treatment of a sick patient and the prevention of disease.

The only important difference between the legal and the medical point of view in this connection is that while the latter is rather humble in regard to the efficacy of its remedies and is entirely convinced of the necessity of further research and study in devising effective treatment, the jurist considers that the question of treatment has been solved long since in its essential details and that in the system of punishment and legal procedure in general he possesses an assured panacea for social ills.

Notable individual exceptions to this last statement do not seriously affect its general correctness. Throughout the civilized world there are numerous institutions with large annual budgets from public and private sources which are occupied exclusively with the investigation of the biological phenomena underlying disease, with the ultimate object of devising methods of combating the physical ailments of humanity.

With the exception of a few small laboratories, too young and in the main too poorly endowed financially to have as yet contributed important additions to our knowledge, there are no institutions which deal with legal treatment as a problem of science. Nevertheless, it is probably safe to say that there will be little progress in the application of the law in criminal cases unless the point of view of the scientific investigator becomes permanently established as a necessary adjunct to this branch of human knowledge.

Someone has justly said that "Laws are discovered, not made." If this is true anywhere, it is true in the field of criminology.

This new affiliation between law and science which has come about as a result of some of the circumstances mentioned, promises not only to provide for new methods for dealing with old, vexatious problems, but to give new life to the study of criminology because it clearly defines the objects sought.

Psychopathic work in connection with the criminal courts accomplishes two purposes. In the first place, it classifies the individual delinquent or criminal not according to the type of his act nor according to the amount of damage done, but according to the elements of his personality. In other words, it attempts to disclose the underlying causes of the particular act which brought the delinquent into court. In the second place, on a basis of such facts as this examination discloses, a plan of treatment may be devised to suit the needs of this particular individual rather than the general requirements of his type.

One of the reasons why psychopathic laboratories in connection with criminal courts are still open to objection by a large proportion of the legal profession, is probably because up to the present the emphasis has been laid almost entirely upon the classification of criminals. Such classification, while of scientific value, is after all largely academic, unless it is made the basis of treatment.

In medicine the diagnosis is apparently over-emphasized at times, at least in the eyes of the layman, merely because if once a correct diagnosis has been established the proper treatment is a comparatively obvious matter.

Not so in the law. Here, while classification is still far from what is to be desired, it is even now much better developed than are the methods of treatment.

It is toward this latter side of the work that the energies of the community must be bent so that the scientific classification of criminals by scientists may be made of practical use to the courts.

In speaking now specifically of the organization of a psychopathic laboratory in connection with the criminal court, it must be understood that these suggestions must necessarily be tentative. The whole problem is still largely an experimental one and the best methods of dealing with it are still to be discovered.

This, however, can be accomplished only if a persistent effort is made utilizing all the facilities at present known to this branch of science and in such a way that necessary improvements can be applied whenever it is found expedient to do so.

This means that whatever organization may be decided upon must have a large element of elasticity so that it can adapt itself to changing needs and to new facts as they are discovered.

The first consideration in organizing such a laboratory is the consideration that scientific research has come to be dependent upon adequate organization much as has advance in any other human activity.

Always excepting the appearance of a genius of the first magnitude, who may be able to achieve impressive results with the meagerest equipment and under the most unfavorable conditions, it may be said that the returns of scientific research are directly proportionate to the magnitude of the attack made upon the problems. In this field, as in any other field of science, a small investment both in regard to actual money and in regard to the number and intelligence of the workers, will yield small results.

Just as in wars there was a time when a champion could in single combat decide the fate of a whole people, so there has been a time, not so long ago, when in science a single worker, armed with nothing more than a well-filled fountain pen, could achieve results of compelling significance.

The enormous advance of science in the last generation has made this method, if not impossible, at least very uncertain.

The domain of mental science presents even greater difficulties than those of almost any other branch of science. The average methods of investigation are delicate, the technique is difficult, the problems are illusive. Nevertheless, the results so far achieved show that in this field, as in any other, the well-established rules of scientific procedure

will yield returns if a carefully planned attack is carried out under such circumstances that the available means are sufficient to press home every advantage gained.

In order to accomplish this, it is therefore not sufficient to engage the services of a competent psychopathologist to make a personal examination of such cases as attract the attention of the judge. While such work may be of some assistance to the judge in coming to a decision in specific cases as to the responsibilities of the individual, and may often serve to modify the penalty imposed, it can never hope to satisfy the requirements. In the first place, the time taken by a conscientious examination is such as to preclude the possibility of applying this method to a sufficient number of cases to have any serious effect upon the total problem. In the second place, the work must necessarily confine itself under these conditions to an examination and preliminary classification without leaving any time to the much more important constructive work of prevention and above all, treatment.

The inference from this is obvious that the technique of this problem has now grown to such proportions that a larger organization is clearly necessary.

The work to be done by a psychopathic department in connection with the criminal court consists on the one hand in examination and classifications and on the other in treatment.

Properly to carry this out a staff of workers, instead of a single worker, is essential. But the proper functioning of such a staff requires integration, correlation of effort and therefore a co-ordination of the workers in each department under a single head. The director of this laboratory should be a psychopathologist of suitable training and experience, whose duties should be in the main those of dividing the work among the other members of the department, correlating their findings and working out general policies of examination and treatment. He should, therefore, be freed as much as possible from routine examinations so as to allow him the fullest liberty to concentrate upon the more difficult portions of the work.

He should further have the mental quality of originality so that he may stimulate and carry on research.

Under him there should be a corps of workers engaged upon the various divisions of this work. Some of these should carry out the routine mental testing and the routine psychiatric examinations. Others should specialize in physical examinations, including anthropometric examinations, metabolism studies and psychological examinations. Still others would be occupied with social problems, investiga-

tion of home environment; the history and antecedents of the individuals; problems of heredity and of education.

On the basis of knowledge accumulated by these workers, a proper classification of the individual delinquent would be possible, which would not only serve to guide the judge and other officers concerned with the adjudication of the particular circumstances at issue, but would form a basis for a sound and scientific treatment designed to correct the individual's abnormalities and to prevent the reoccurrence of delinquency in his case.

The treatment indicated, to be effective, must then be carried out under the scientific direction of this or a similar group of workers. This means that the work of such a psychopathic laboratory must be extended not only to the institutions to which some of the delinquents are committed, but to the community in case they are returned to it.

In the practical carrying out of this work a close relationship between the psychopathic laboratory and those agencies which deal with the delinquents in the community and in the institutions will be necessary. The first step in this direction would be to co-ordinate the probation department and other social service departments now connected officially or unofficially with the courts with the laboratory.

This arrangement means the enlarging of the psychopathic laboratory so as to include specialists in various types of the work, such as psychopathology, psychology, psychiatry and the various lines of social work and education.

The number of these workers must, in principle, depend not upon the size of the appropriation that one is able to obtain from the authorities, but upon the number of cases brought into court. If this sort of examination is of value at all it should be applied to all the cases in the community. The selection of individuals for intensive work should not be left to chance but should be made as the result of definite findings after a suitable examination by experts.

In the work with syphilis a similar situation has existed. On account of the stigma attached to this disease, and on account of the delicate and difficult technique, the selection of the cases has often been made on the basis of social or personal factors with the result that a large number of individuals have been permitted to continue without treatment so long that when the disease was finally discovered the attempts at treatment have failed.

In the more progressive clinics it has long since been the custom to make no selection in regard to the tests, but to examine every patient admitted. The result of the test frequently has disclosed the

presence of the disease in cases in which it might otherwise not have been even suspected until years later, and has made possible an early and effective treatment.

Just so with the mental examination. The time will undoubtedly come when the old methods of education will have been so improved as to include as routine measures, mental surveys of each child during its earliest school years, at a time when logical method of treatment based upon definite knowledge may be counted upon to yield maximum returns.

The extent of such a routine, preliminary examination and the exact methods to be adopted will, of course, vary from time to time as new knowledge is acquired; but these details must be left to the staff of the laboratory to determine.

We would have then a psychopathic laboratory or institute working as a scientific organization, to determine specific impersonal facts in regard to the individuals brought before the bar of justice.

On the basis of the facts determined, just as definite and impersonal recommendations may be made and these finally presented to the judge who may then use this information according to his best judgment in the individual case. If legal treatment is decided upon, the judge will have the means for carrying it out. At his order the various workers in the probation department, the social service department or those on the medical staff of the laboratory may proceed to carry out a logical and scientific treatment, based not upon generalities, but upon definite knowledge of the particular individual concerned.

The equipment necessary for this work consists in the first place of a staff large enough to perform the actual work required in the way of testing and examination; suitable quarters for this work and the necessary apparatus and scientific equipment. This will include, of course, suitable clerical help, so that minute records may be kept which are of importance not only in connection with the individual case, but also in working out generalizations upon which the broad policies may be based.

So long as this work is confined to a single court or a group of courts located in the same building, this laboratory may be located in rooms adjoining the courts. This arrangement, however, has one drawback. In performing these examinations it is very often not possible for a single application of tests to solve all the most important mental problems presented. After all the problem is one of behavior-

istic psychology. Great emphasis must be placed for a long time to come upon the history and career of the individual.

It is almost the rule in cases in which litigation of one kind or another occurs that an objective knowledge of the actual facts is difficult if not impossible to obtain. Under such circumstances it is always essential that there be provision for the observation of problem cases under environmental conditions which are standardized and under the control of the scientific organization.

The behavior and reactions of the individuals placed in such an environment become significant, whereas under the haphazard conditions of the community at large their evaluation would be impossible.

Such a scientific observation, for a period often not exceeding ten days, or at most a month, proves frequently a shortcut to the elucidation of social problems which might take years under the ordinary conditions of community life to determine, and yet it is often just these social questions which form the most important features of many of these cases, and the failure to elucidate them and to evaluate them properly often prevents adequate disposition of the cases.

To meet this condition it is necessary to establish in connection with the psychopathic laboratory of the court a detention ward or home which should be under the direct authority of the scientific staff. In such an institution, even the entire routine of the inmates' lives can be made to yield significant facts. If properly officered by suitably trained nurses and attendants, such an institution could offer as an instrument for scientific investigation definitely pre-arranged conditions. An observation in such an environment would yield information in regard to the presence or absence of definite psychopathic traits, of inherent anti-social trends, facts in regard to the development of the individuals, whether depressed or optimistic, whether inhibited or retarded, whether hyperkinetic or active; whether friendly and affectionate or sulky, suspicious and hostile; whether truthful or dishonest, simple or complex in character. Furthermore, such an observation would offer the opportunity to make more extensive investigations than are possible at the court itself in the hurried proceedings produced by the numerous cases on the calendar.

Finally the observation period carries with it an important advantage in that the scientific examinations may be made at the time most favorable for performing the same. It would be possible to put the patient into a suitable frame of mind to co-operate with the examiner or clearly to show that such co-operation was not to be obtained.

Such an institution could, furthermore, be made to serve not one

court or a small group of courts, but all the courts in the community dealing with criminal cases. If such an institution is established, organization of this department could be made to resemble in general the organization of the medical service of the army.

The institution would represent a field hospital with first aid stations at the courts themselves. The court work could be reduced to a much simpler routine so that a single worker could pass upon a much larger number of cases during a given time than is possible if his work represents the entire psychopathic work in connection with every case. He would act, then, largely as a preliminary diagnostician. He could quickly determine whether the case presented required a more extended examination or not. In those cases which would not require such examination legal disposition could be made at once, and thus the work of the court would be expedited.

Those cases in which more extensive examination was recommended, could be continued and the delinquents sent to the observation station, where a further investigation could be made in the most economical fashion without undue haste.

From this observation station the individuals could then be returned to the court for disposition in accordance with the findings. The disposition made by the court then would be either the discharge of the individual or the return of the delinquent to the community under the authority of the follow-up and after-care departments, which would act through the probation department or social service agencies; or the court could commit the individual to the custodial institutions, which would be the analogue of base hospitals in the military medical service.

This arrangement would emphasize a branch of the court work which at present is recognized as important, but has not yet been developed to the extent necessary adequately to fulfill its purpose.

That is, the after-care which deals with the rehabilitation of the individual and with prevention, should become an important and purposeful branch of the court's activities. The officials carrying out the orders of the court in this regard would act under the authority and in close association with the psychopathologist at the central observation station.

As a logical consequence of this arrangement the observation station would provide a service similar to that of the dispensary of a hospital; a place where any one in need could consult the experts without any legal formalities. Wherever this has been tried out it has been found that contrary to the expectations of many, there are

large numbers of individuals in the community, whether primarily psychopathic or primarily delinquent, who are not only willing but often desirous of consulting with any one who holds out the hope of correcting their defects.

This experience, in spite of the cynical attitude of many concerned with the problem of crime, has served to strengthen the contention that with the exception of a small group of psychopathic individuals of the paranoid type who have a definite and inherent anti-social trend, the majority of mankind, even those who persist in getting into difficulties with the law, have a fundamental desire to do right. Such individuals, therefore, when they do get into trouble find themselves in unpleasant situations not as a result of any intentional evil doing, but as the result of some lack in their mental or physical equipment.

This may be nothing more than a poor memory, a weak will, an increased suggestibility or poor judgment.

It is of particular importance in connection with these individuals to note the fact that unpleasant experiences or even suffering do not in any way correct their innate defects. To attempt, therefore, to deal with these individuals on the principle that if the ordinary terrifying experiences of community life have failed a more terrible experience will act as a deterrent, is foredoomed to failure.

There is little doubt in the minds of competent specialists that these older methods have been tried extensively and for a long time with, on the whole, unsatisfactory results. The continued reliance of the law on the efficacy of treatment by punishment can therefore be explained only on the basis of conservatism and perhaps an instinctive reliance upon the principle of vengeance. That this latter still plays an important role in the minds of many is evidenced by a recent editorial in the public press against what was termed "mushy justice." It takes considerable courage on the part of a judge, in the face of the popular opposition on the part of the general public to the sympathetic treatment of the criminal, to employ the modern methods of treatment based on scientific investigation of the individuals.

The opposition has been able to adduce some evidence unfavorable to the psychopathic laboratory in connection with the criminal court. This has been due in part to the fact that every self-styled psychopathologist is not necessarily competent to perform this service.

But, in the main, it is probably due to the fact that the experiment of including psychopathic work in the regular court proceedings

has not as yet been tried out on such a scale as to make success certain.

We are dealing with a problem which in numbers affected and the money value of property involved is second in magnitude not even to the present world war. An attack upon this must be made with sufficient preparation and on a sufficiently large scale to be commensurate with the difficulties and magnitude of the objective.

In order to gain the results absolutely necessary, the community must become accustomed to the idea that nothing but a first class organization can hope to accomplish anything more than trivial results. It is probable that the official treasury of state or municipality will not for some time to come be able to bear the burden of this work. Chicago leads the entire country in the establishment of a psychopathic laboratory in connection with the courts. The Juvenile Psychopathic Institute and the Psychopathic Laboratory of the Municipal Court were the first of their kind to be established in this country. They have been copied extensively elsewhere since their establishment.

In each case the expenses were defrayed for a number of years by private individuals. The idea underlying this unselfish public service was that if a demonstration could be made it would serve as such a compelling object lesson that the community would be forced to continue the work at its own expense. We are now confronted by the necessity of increasing largely the size and scope of these organizations. In order to accomplish this it will be necessary again to make a public demonstration. This can be hoped for only as private means will again come to the rescue of the community in showing officials and laymen what their duties are in regard to an important group of individuals whose activities represent a total annual loss in life and property, which is greater here in Chicago than almost anywhere else in the country.

The Rockefeller Foundation has pointed the way by establishing its research institute in close co-operation with the Bedford Hills Reformatory for Women. It has recently established a similar institute in connection with the Sing Sing State Prison in New York. In Boston the Judge Baker Foundation has just put ample means at the disposal of Dr. Healy to inaugurate psychopathic work similar to that done by him in connection with the Juvenile Psychopathic Institute in Chicago during the past nine years.

If, as seems likely, the community will not undertake this burden, whether because of a difference of opinion in regard to its efficacy

or whether as a result of insufficient information on the subject, it will be necessary for private philanthropies to at least temporarily supply this need. Nowhere is this more important than in the case of the juvenile offenders, whether at the Juvenile Court or at the Municipal or Criminal Courts.

The earlier in life these methods are applied the better the chances of good results. The world war recently has been frequently given as a cause for the suspension or postponement of such efforts as these. The experience in England during the first two years of this war has conclusively demonstrated the necessity not only of continuing all relief efforts and educational standards in connection with minors, but of actually increasing them.

The problem of criminality, particularly of juvenile criminality, is one which becomes of the utmost importance during the time of national peril. Mr. Cecil Leeson in "The Child and the War" has the following to say: "Even for adults the world of the moment is a harder place to dwell in than it was two years ago; it is not likely to be less hard for inexperienced children from whom guidance is withheld."

In 1915 Juvenile delinquency increased in England, as a whole, 34 per cent, while in the larger cities it increased from 46 per cent to 56 per cent.

If in times of peace we are urgently concerned in coping with the increased magnitude of the problem of delinquents, it is obvious that in a time of war the obligation upon us is binding. It is time that we discarded the old and unsuccessful methods of the past.

In joining forces with the scientific worker and availing ourselves of the new methods that result from the psychopathic examination of delinquents, not only in the obtaining of a better understanding of the individual but in the recognition and treatment of his failings, we put ourselves in the position of obtaining new resources and more powerful instruments in attacking and overcoming one of the most important obstacles to the progress of civilization.

SOME ASPECTS OF ENGLISH PENAL INSTITUTIONS

ANNE BATES¹

PREFACE

These comments are the result of observations, interviews and reading during a stay in England, chiefly in London, from November, 1915, to May, 1916.

I wish to express my gratitude for the courtesy and helpfulness of all English officials whom I approached on the subject of penal institutions, and of the governors, or superintendents, and their staffs, of the institutions visited. They were generous in giving their time to inform me; they gave me permits to visit any institution that I asked to see; frequently they gave me copies of laws and reports; they gave me introductions to persons who could help me in my investigations.

I have appended Miss Barker's scheme for a reformatory because I think it may prove helpful to directors and superintendents of such institutions. Her experience as principal of an industrial institute, and the remarkable capacity that she has shown for organization, render her suggestions valuable. I have her permission to incorporate them in my report.

PART I—THE GENERAL SITUATION.

Introduction.—In my general statements and in my observations on particular institutions, my point of view has been affected by three considerations.

First. I have had in mind the difference between the English and the American situation. In England penal institutions for all persons over sixteen (the limit of the children's court jurisdiction) are under the management of the Prison Commission, a department of the Home Office. Hence they are standardized and can largely be made to conform to the enlightened views of the commission on cleanliness, sanitation, segregation of diseased prisoners, occupation, diet, freedom from brutality, training of the staff. But this central control does not allow opportunity for experimentation, for the beneficent innovation of self-government and outside work under parole found in American institutions from New York to Oregon. The reformatory and industrial schools are under private management and are diverse in character. However, as they are inspected by a department of the

¹Anne Bates, Ph. D., of St. Louis, Mo., while conducting the investigation on which this article is based, was Honorary Special Agent of the National Committee on Prisons, New York City.

Home Office and sometimes by education officers and receive grants in aid in so far as they conform to the requirements of those public authorities, they are tending towards standardization—much to their benefit, I should judge—under the wise and humane ideals of Mr. C. E. B. Russell, Chief Inspector of Reformatory and Industrial Schools.

Secondly. I find myself compelled to speak with caution, even of things that I saw. I have several times found that investigators, myself and others, even official inspectors, failed to discover the truth. Superficial appearances may be deceptively bad or good.

In the *third* place, I have not only tried to observe; I have also tried to estimate the usefulness of the special methods and manner of administration of institutions. My criterion has been public policy. Penal authorities of such diverse conclusions as Dr. James Devon, Sir Evelyn Ruggles-Brise and Mr. Thomas Mott Osborne, profess the same criterion. And this does not in the least prevent them, humane men as they are, from taking the liveliest interest in the welfare of the individual criminal. As Mr. Osborne says, it is good for the community that men convicted of some kinds of behavior should be segregated; it is also good for the community that those men should return to it as capable as possible of leading normal lives. Sir Evelyn approves certain severities and deprivations in prison life to deter men from incurring prison sentences; that is, for the good of the community. Dr. Devon would enlarge enormously the scope of probation and parole to relieve men from the deteriorating effects of imprisonment and to enable them to continue activities conducive to their own and the community's good. He recognizes that penology as at present practiced is a sorry makeshift; an attempted alleviation of the symptoms, not an excision of the causes. Not until we try to lessen destitution and do away with overcrowding and deal more drastically with the feeble-minded and "socially inefficient," to use Prof. Pearson's illuminative term, shall we have a scientific criminology.

It is, however, eminently worth while to attempt to get a makeshift penology to function along scientific lines; that is, to determine the true purpose of punishment and then to adopt means to accomplish the desired end. I have insisted at such length on this seemingly obvious end, the best interest of the community, because it is a sad fact that many persons still believe in vengeance as a proper reason for punishment; and others, probably fewer, consider the reform of the criminal as of paramount importance; a thing, to be sure, both desirable from a humanitarian point of view and as a means second only to prevention

in attaining the main object—protection of the community. Also because some persons, blindly or perversely, insist that betterers of prison conditions are maudlin sentimentalists, who are so carried away by their pity for those unfortunate enough to be incarcerated that they forget the welfare of the many not within prison walls.

A. HIS MAJESTY'S PRISONS.

I. Physical Condition.

So far as I saw and heard the physical conditions were generally good. (I do not include police station cells; I did not visit them.) The buildings appeared to me clean and the air was good. Cells and corridors were chilly, and the cells would feel close in summer. But, as Dr. Morton, attendant physician and deputy governor of the Borstal Institution at Borstal, reminded me, the climate of England is so different from that of America that they do not need to provide for our extremes of heat and cold. He said the cubic feet of air provided were more than required for health, as determined by medical authority. However, I should think it so slight a matter to put more of the small panes of the windows on slides that it could be done at little cost, and thus add to the vitality of the prisoners. This is done in the tuberculosis cells in Holloway Gaol.

The kitchens appeared clean and the food good; what I tasted was good.

If I may be allowed to make a comparison, I should say that in physical condition English prisons fall below the best in America, but are vastly superior to the worst.

II. Employment.

Prisoners are rarely kept in idleness any length of time. I consider this one of the best features of English prisons. For occupation preserves mental and moral health, and promotes happiness, conscious happiness, be it said to the credit of human nature. For in some American jails prisoners ask for work, despite the fact that no attractive work is available. Much of the work in His Majesty's prisons, except in the Borstal Institutions, is uninteresting and uneducative. The making of clothing for a naval academy, laundry work, a knitting machine, perhaps give some training valuable upon discharge, and do, I believe, arouse interest. On the other hand, the making of mail bags must become very monotonous. Also, during the war, of sand-bags, except that the patriotism supplies a spiritual interest.

III. Attitude of Officers.

In the Borstal Institution for Girls at Aylesbury, I found clear evidence of the human relation and good feeling between officers and wards. I shall give that evidence in detail in my account of that institution. Nowhere else have I first-hand knowledge of the usual treatment of inmates of prisons by officers. A visit of an hour or two to an ordered, regulated, systematized institution gives the visitor little more than a superficial view of the physical conditions, and the manners of officials to and before the visitor. The case of the suffragettes as given by newspapers at the time and in some books written by the sufferers would incline one to believe that brutality is not impossible, at least in unusual circumstances. However, that case is too abnormal, and the desire on the part of the women imprisoned to be martyrs too frankly acknowledged, to allow it to have much weight in a general view of the situation. The rules issued by the Prison Commission for officers require kindness, truthfulness and firmness, but forbid friendly conversation. In the Girl's Borstal, this prohibition is not interpreted to preclude some girlish confidences to kind and sympathetic officers. My impression is that brutality is rare, harshness not common, but helpful friendliness not the usual thing.

IV. Discipline.

The discipline in the prisons is severe. The order, I judge, is entirely too good for the real interests of the prisoners. When I asked Mr. Thomas Holmes if the repression did not have a stagnating effect, he said that it did; that he believed the present severe orderliness was worse for the prisoners mentally than the former condition, even with its occasional brutality. However, as Mr. Homer Lane suggested, the very repression gives scope to the exercise of ingenuity in circumventing it, as in communicating through cell walls by tapping, and in speaking without moving the lips. Solitary confinement is not common; work is nearly always in association. Except in certain special grades, newspapers are not allowed; but books are—novels, histories, books of travel. Conversation is forbidden, and they eat their meals in their cells. Preventive detention prisoners have a much relaxed discipline, and a few in special grades in convict and Borstal prisons may speak a little for a short time each day during one meal in association or during exercise or recreation. The prisoners may speak to the officers, and occasionally to each other, about their work. I believe I found no official who agreed with me that silence had, or would naturally have, an injurious mental and nervous effect. The most

encouraging thing that I heard about prison discipline was a remark made to me by Miss White, head matron of Holloway Goal. She has under her instruction women who desire to be officers, or warders, in prisons, working as probationers. She said that if she observed a probationer who was incapable of a wise blindness she told the woman that she had better seek some other occupation, for she was not fitted to have the charge of prisoners. I had an interesting confirmation of my own view in the casual remark of an army medical officer. He spoke of a prisoners' camp in Germany where the British prisoners were not allowed to speak, and said: "And silence makes men feeble-minded." Since he did not know of my interest in penology I value that statement especially as made without animus.

The effect of silence is difficult to determine, more difficult to measure. Certainly, no effort has yet been made to determine and measure it scientifically. But it is a rather generally accepted modern doctrine in education and in political life that some liberty, human intercourse, exchange of ideas (even poor ones), mental activity, initiative, interest, are more developing and civilizing than silence and repression and strict orderliness. Why not true in prison as elsewhere?

One argument in favor of silence was that the conversation would be anything but edifying. That is a less evil; but it can be avoided by the presence of an officer, either within earshot, or likely to be so at any moment. Certainly an officer is present during the one meal a day in association that is had by the special grade Borstal girls.

The other argument was that incarceration is distinctly punitive, that is, deterrent; therefore, so far from trying to make the inmates happy, the effort is to make them dislike the prison so much that they will try not to return. This is the argument used by Sir Evelyn Ruggles-Brise for silence and the deprivation of newspapers. If these deprivations and repressions did not help to send the prisoner out worse than he went in, and if they deterred, I should heartily agree with him. But I believe that they are deleterious, and I do not believe that they deter. Prisons doubtless deter many from crime, first, because of the disgrace, and, secondly, because of loss of liberty. But it hardly seems probable that they deter by their disagreeableness. Crime has diminished and prisons have become more comfortable in the same period; probably with slight causal relation between the two phenomena; they both result from a general growth in humanity and enlightenment.

Punishments are: Loss of grade privilege or remission; dietary

punishment; close confinement in ordinary cells; corporal punishment; close confinement in special cells for refractory and violent prisoners; irons or handcuffs. The last three are rarely inflicted. Corporal punishment is given only on the order of two magistrates. This placing it under magistrates has silenced public clamor against it.

In respect to a deterrent diet I quote from a letter written me by Sir Evelyn Ruggles-Brise, Chairman of the Prison Commission;

"The diets for prisoners were framed by a Dietary Committee, which inquired into the subject in 1898, and reported as follows: 'We have eliminated from the scales of diet, which we submit, the penal element, . . . but having regard to the grave dangers which would, we believe, accrue, should the lowest of our scales offer temptation to the loafer or mendicant, we have so framed that scale that it shall consist of the plainest food, unattractive, but good and wholesome, and adequate in amount and kind to maintain health and strength during the single week for which it is given.' The diet is given to all convicted prisoners with sentences of four months or less for the first seven days of their imprisonment, the number who receive it being about ninety per cent of the whole.

"The diet is physiologically adequate; the energetic value is 2,669 calories, as compared with an average standard of 3,063 calories given by eight authorities as a suitable diet for a man of average size and weight doing a moderate amount of muscular work.

"In the absence of data on which to form a definite opinion, it is difficult to say whether the diet is sufficiently disliked to prove deterrent."

VI. After-Care.

It is said that no prisoner in England leaves the prison without offer of aid. There are various societies for this work, some aided by government grants, as the Discharged Prisoners' Aid Societies and the Borstal Association. The Borstal Association has agents in many towns, thus making it easier to find work for young persons discharged on license, and also easier to remove them from former surroundings if not good. The association has the co-operation of the police. The members of the Lady Visitors' Association interest themselves in the individual inmates of the female prisons, and thus learn what they desire to do when they leave; they are, at least in some instances, also managers of temporary homes for discharged prisoners.

There are also societies for the aid of prisoners' families; I think the Discharged Prisoners' Aid Societies do some of this work also. The Church Army has a house where the wives of prisoners may earn their living at laundry or sewing, and are instructed so as to become more proficient. There is a crèche in the same building for their children, while the mothers are at work.

The industrial and reformatory schools have their own after-care

agents, and often make use of the various voluntary agencies for social service.

The work of these helpful agencies, so far as I could see and learn, is admirable. But there are the same difficulties as in America. A superintendent of a school deplored the lack of enough supervising agents. Several persons spoke of the difficulty of finding employment for ex-prisoners; many employers would not have them; also they were often ill-prepared for any sort of work; frequently unstable; for the young it is hard to find suitable homes; the Auxiliary Homes, established in connection with some industrial and reformatory schools for former inmates, are a great help.

Miss Ellwood, the secretary of the Borstal Association in charge of the Girls' Department, and Miss Lillian Barker (see appendix) discussed with me the difficulties of finding employment suitable for discharged Borstal girls. Both said that for that type of girl domestic service was often not only unattractive, but by its long hours and loneliness positively dangerous. Miss Barker thought farm work would interest them, and gardening is taught the Borstal girls. Farmers, however, seem unwilling to employ ex-prisoners.

B. TENDENCIES IN CRIMINAL LAW AND ADMINISTRATION.

I. *Children's Courts.*

It is the police court that deals with children's cases of employment, of destitution, of delinquency. The public, except reporters, is excluded; permission to attend must be sought from the magistrate. In the case of delinquency the age is only up to sixteen. The procedure is criminal, but, as officials assured me, the attitude is parental and the aim is to consider the best interests of the child with reference to his capacities, character and environment. But in England, as in America, it is not so much the wording of the law as the attitude of the magistrate that determines the character of the children's courts. In the Old Street Police Court, Mr. W. Clarke Hall, magistrate, called nearly every child upon his platform and conversed with him in a low tone; this was after the formal procedure to find out the facts of the offense, and to hear reports on the child's character and environment. I heard at a reformatory that Mr. Hall kept up with the boys whom he sent there. Sir John Dickinson, of Bow Street Police Court, gave me an account of an amusing case in which he tried to avoid a conviction. A penalty sometimes inflicted on the boys is birching, at the hands of the goaler, in the presence of the parent or guardian. In this case Sir John was convinced from the manner of the father and

son that the father was not master in his own house. So he told the father that if he would birch his son in the presence of the goaler, he might save his son from conviction. The father demurred, but at last consented. However, they returned with the same manner. Sir John consulted the goaler, who said that the boy had not been hurt at all. So the father was sent out to try again. This time he returned with his head up, and the boy returned crestfallen. So the magistrate felt it safe to try the boy at home again.

Mr. Hall seems doubtful about the utility of corporal punishment. He remarked in court, when trying a recidivist, "I believe whenever I have a boy birched he returns to me." But a social worker told me that little boys stood in wholesome fear of the official birching. Most persons I talked with did not fear the brutalizing or cowering effect of corporal punishment as we do.

The probation officers do not investigate before the appearance of the child in court, as is done in Chicago and Louisville. Hence, as in New York, it is often necessary to remand for further information. However, certain education officers frequently make investigations before trial, and they are present in court to inform the magistrate. When the child is remanded he is either left in the custody of his parents or sent to a remand home. The large cities have special remand homes. London has three. The smaller places make use of private, or semi-private, institutions provided for the care of needy boys and girls, as in Bath (c. f. New York's use as a detention home of the clearing house managed by the Society for the Prevention of Cruelty to Children). Or of private houses, as a policeman's for boys and a teacher's for girls in Winchester. After conviction, the child may be dismissed with a warning; or the parent may be put under bond for the child's behavior; or the child may be put on probation; or birched; or, finally, if under twelve sent to an industrial school; if over twelve, to a reformatory, sometimes in the form of a training ship. There is a tendency to use probation more and more; and yet two magistrates considered that there was danger of overdoing it; if the home were bad physically or morally, or if the child could not be controlled there, an institution was better. Mr. Russell would like to board out many delinquents. I believe it is done in South Australia, unless the child is too incorrigible. Boarding out is used to some extent by the Poor Law Guardians for destitute children. Institutionalization is avoided, but without very careful inspection it is dangerous, as has been pointed out by Mrs. Sidney Webb and others. The scheme that I believe is most favored by the State Chil-

dren's Association is that of the Sheffield or Scattered Homes; ten of fifteen children of various ages in one house kept by a house-mother; the children to go to the village churches and schools, thus taking part in the life of the community and avoiding institutionalization and the evils of segregation. This system costs less per child than the Barrack Schools or Metropolitan Village Communities, but a little more than when the child is boarded out.

II. Borstal Institutions.

In the Village of Borstal, near Chatham, a reformatory for boy criminals from sixteen to twenty-one years of age was established about eight years ago. Hence the name Borstal Institution. There are now four such reformatories, three for boys, one for girls.

The term of the sentence is not less than two years nor more than three. As the institution is essentially a training school, sentences shorter than two years were deprecated by the officials. Girls may be discharged on license after three months, boys after six.

A social worker suggested to me one great drawback in the Borstal system. In order to give boys and girls the benefits of the training, courts are inclined to impose a longer sentence than they otherwise would, thus shutting them up for two or three formative and valuable years, deprived of the varied discipline of normal life. On the other hand the short sentence is disapproved by many; it does not deter the recidivist, already disgraced with the reputation of a jail-bird; it takes away the self-respect of the first offender without giving him any compensation in the way of a possible training in orderliness, cleanliness, sobriety and industry.

These institutions differ from reformatories for boys and girls of twelve to sixteen years of age in the severe penal discipline and, I believe, in the better equipment for industrial training and in the more thorough after-care. These boys and girls are picked criminals; before the court sentences one to a Borstal Institution, it must be satisfied "that, by reason of his criminal habits or tendencies, or association with persons of bad character, it is expedient" that he be sent to such an institution; also "that the character, state of health, and mental condition of the offender, and the other circumstances of the case are such that the offender is likely to profit by such instruction and discipline." I quote from the "Prevention of Crime Act," 1908. The work is too hard for any but the physically strong, and is not fitted to the feeble-minded. There is now an effort to get a Borstal Institution for boys of less physical strength. In spite of this unpromising

material the results of the training and Borstal Association after-care are very good. "The Borstal Association Annual Report, 1915," p. 14: "The records of all boys discharged between August, 1909, and the end of March, 1914, have been examined; that is to say, of all the boys who *have been at liberty at least a year*. It appears that 1,454 were discharged during that period. * * * 73% *have not been reported* as reconvicted." It has been suggested that records are kept for two years only, and in that time the boys have not sufficiently recovered from the deadening effect of the severe order and control of the institution to become initiative even in crime. Same report, p. 13: "Unsatisfactory boys are mainly those who appear to have been born tired. They will not get up in the morning. Will not put themselves out to meet emergencies. When they fall out of work they are incapable of looking for a new job. Such persons are unfit to keep up with the general pace, and will be a nuisance and menace to society until it places them under a mild but continuous restraint, compelling them at all events to justify their existence by earning their own living." This reminds one of Prof. Pearson's "socially inefficient" and of Dr. Katherine Davis' class of persons who need "continual custodial care." But society as yet is unwilling to protest such classes or itself from them. In 1908 Parliament passed the Prevention of Crime Act, the second part of which relates to Detention of Habitual Criminals. In 1913 (I believe) it passed an act for the detention of the feeble-minded. Both acts were so weakened from the original bills that it is feared the results will be but meager.

There is much enthusiasm over the Borstal Institutions in England, and I have heard them highly praised in America. Indeed they have fine qualities; interesting and instructive work, much of it a real training for earning a livelihood; and the after-care of the Borstal Association. But the lack of training in, or opportunity for, initiative and self-direction and self-dependence; the denial of the humanizing elements of conversation and an interest in current events seem to me serious defects. It is true special grade prisoners have some association; at Borstal, too much, in my judgment, for they sleep in a dormitory. And they, at least sometimes, see newspapers.

III. Preventive Detention.

Prevention of Crime Act, 1908, Section 10:

"Where a person is convicted on indictment of crime * * * and * * * admits that he is or is found by the jury [the act lays down criterion] to be a habitual criminal, and the court passes a sentence of

penal servitude, the court, if of opinion that by reason of his criminal habits and mode of life it is expedient for the protection of the public that the offender should be kept in detention for a lengthened period of years, may pass a further sentence ordering that on the determination of the sentence of penal servitude he be detained for such period not exceeding ten nor less than five years [indeterminate was asked for] as the court may determine; and such detention is hereinafter referred to as preventive detention." Such prisoners are frequently referred to as "P. D.'s." The discipline is much relaxed.

At Camp Hill, the Isle of Wight, is the preventive detention prison for men. A small part of the prison for habitual inebriates at Aylesbury is used as a preventive detention prison for women. The Secretary of State may at any time discharge any such prisoner on license, with any conditions he thinks best, and on probation or not to some society or person named in the license.

It is too early to pass judgment on the system. It has two excellent features—the humanizing effect of the relaxed discipline and the aid of probation when discharged on license.

IV. Indeterminate Sentence.

I was assured by several officials that there was no tendency towards the completely indeterminate sentence; but discharge upon license is common. Captain St. John's paper on "The Indeterminate Sentence," published in 1908, gave the situation as it then was.

V. Probation.

There seems to be a hopeful tendency to try to keep offenders out of prison. Probation is increasingly used, both for juvenile and for older offenders. Magistrates are required, except under special circumstances, to allow time for the payment of fines, by the Criminal Justice Administration Act, 1914, which is described in the Act itself as "An Act to diminish the number of cases committed to prison." This language suggests a wholesome distrust of the so-called beneficial effects of imprisonment. Perhaps the English legislators agree with the "eminent judge," quoted by Mr. Francis Lynde Stetson: "I doubt whether the commission of crime has been appreciably diminished by our system of punishment." Probation not only keeps the offender out of prison, gives a motive for honest effort, and provides him with friendly help and advice; it requires the court to investigate the character and environment of the offender in order to decide whether he is a fit subject for probation. It is the growing effort to investigate the circumstances of an offense, not merely to decide the question of

guilty or not guilty, that Mr. Thomas Holmes considers the most hopeful tendency in criminal administration. Both Mr. Holmes and Mr. Cecil Leeson, formerly a probation officer, at present secretary of the Howard Association, deprecated the reluctance of magistrates to require restitution on the part of offenders put under probation. As this is probably the result of age-long separation of criminal and civil remedies, magistrates may be expected in time to adjust their action to the statute (Probation of Offenders Act, 1907), allowing both conviction and restitution.

There is, I was told, nowhere in England such careful examination of the mental idiosyncracies of offenders as is attempted in American psychopathic institutes. Feeble-mindedness in case of children before the juvenile courts is determined by school records; they are feeble-minded if they have attended the special schools for mental defectives. They are sent to these schools by the order of the school physician, generally with the advice of the principal and teachers.

Probation suffers for the want of a body of trained officers. Much use is made of police court missionaries; sometimes excellent, often not satisfactory, for their training and main work have been along different lines. Also other social workers. I met two settlement workers who were juvenile court probation officers.

Mr. Cecil Leeson's "The Probation System," 1914, outlines the situation, makes suggestions and gives results. Dr. James Devon's "The Criminal and the Community" advocates great increase of probation and parole (license). His opinion is official, as he has been for years attendant physician at a Glasgow prison, and has been appointed a prison commissioner. I should call the official appointment of so uncompromising a critic of present methods and results the most hopeful sign of a change for the better in the near future.

Judge Gye of the Hampshire County Court, gave me an account of his use of informal probation. A man is brought before him for non-payment of his grocery bills. He dislikes sending him to goal, for many reasons. So he finds out the offender's wages and the needs of his family; then orders him to give his wife so much a week and to pay so much a week on the grocery account; requires him to report to the court every week until the bill is paid; also tells the man that the judge will find out whether he is doing as he is ordered and is industrious and sober. He does so find out, especially by the co-operation of the police. He has had excellent results from this practice. Frequently the wives of his probationers have come to thank him for the improvement in the conduct of their husbands.

PART II—INSTITUTIONS.

The two institutions that I made a special effort to understand were the Girls' Borstal and the Little Commonwealth; because I suspect that it is along these two lines that the penal institutions in England will progress—official institutions along the lines of the Borstal, unofficial along the line of the Little Commonwealth. This is my reason for the detailed account of these reformatories.

By the courtesy of the authorities in each case, I had the opportunity of spending several days at these institutions.

The Girl's Borstal Institution at Aylesbury.

This reformatory is in the same building as the Aylesbury convict prison for women, but the girls are kept entirely apart from the women. Also under the same governor,² Dr. Winder, and physician, Dr. Selina Fox, and chaplain, Mr. Butler, but the rest of the staff is distinct. I believe this is the only one of the state prisons with a woman physician, but there is an inspector who is a woman physician. The appointment of a woman at Aylesbury is felt by women interested in prisons as a great step forward in the interests of the prisoners.

The authorities are hoping to have a separate establishment, with more land. Naturally, during the war, no building can be undertaken.

There are three grades—ordinary, special and penal—distinguished in appearance by slight differences in dress. When a girl enters she is put into the ordinary grade; in about twelve months she may, by good behavior and industry, advance to the special grade. For bad behavior, or if returned upon broken license, she is put into the penal grade.

Their curriculum is sewing, laundry, cooking, house-cleaning, gardening and care of pigs and chickens—several months each; time regulated by length of sentence and health; the latter part of the sentence is spent on a special trade if a girl has chosen one and shows aptitude for it. Swedish drill every day for six months; then twice a week; none the last six months, to lessen the change from reformatory life to ordinary industrial conditions. Gardening is given out of order if the physician thinks an out-door life better for the health of any girl. They attend school a part of every day until they reach the grade of ordinary children of eleven or twelve. They are assigned to proper grade by examination on entrance. So in the sewing-room they are tried first on plain work, then are advanced to whatever grade of work they are capable of doing. If they sew well before leaving,

²Dr. Fox is now governor of the institution.

they make their own "liberty clothes," the equipment they take out with them, varied with reference to what they are going to do. They may trim their liberty underclothes, and in many cases they are rather elaborate.

The superficial appearance is painfully prison-like; there is much locking of doors; when out of their cells the girls are always attended by an officer, with this small exception: sometimes an officer sends a "trusty" on an errand from one department to another. Meals are served in the cells, except that the special grade girls have their dinner, at mid-day, in association, where a little low conversation is allowed. These girls also have the recreation hour in association, when they talk and see some newspapers. One girl took evident pride in telling me an incident in the trench life of the soldiers. I wondered why this interest in general information should be denied the majority.

In the penal grade no letter or visit is allowed. In ordinary, a letter and visit, or two letters, after six hundred marks have been gained; twelve marks can be earned a day. In the special grade, a letter or visit is allowed once a fortnight. An officer is present during the visit. Only members of the family, or persons whose interest in the girl is likely to prove helpful, may visit or correspond with her.

Aside from the deplorable solitary and silent meals the reformatory is like an old-fashioned strict school, under hard and fast rules, but with kindly instructors. Of course a visitor is at a disadvantage in discovering the ordinary attitude of the instructors in a school; but it is possible to learn something by watching the pupils. You almost felt that you had escaped the prison when groups of girls questioned an order, quietly and courteously, as in an orderly school-room; this happened twice during the days I visited the reformatory, and the incident aroused no surprise—excepting in me. The order in the various workrooms was no stricter than necessary for good work; the pupils frequently asked instruction and spoke to each other occasionally about their work. Discipline is maintained chiefly by moral suasion and by marks. Marks gain promotion in grade and privileges, and a very small amount of money. In the special grade a little of this money may be spent for fruit and some kinds of sweets.

The governor and officers are much pleased to have the pigs and chickens, for the excellent effect on the girls that the care of animals may give. In fact, the girls are amusingly fond of the pigs; and one girl told me with great pride how friendly to her a brooding hen was.

Drill is out of doors if the weather permits. It was generally performed with vim.

There are two chapels: Church of England and Roman Catholic. Because I had met the chaplain I attended the Episcopal services. As I had heard criticism of prison sermons I was especially pleased to hear Mr. Butler, the chaplain, strike a very high note. He preached on nobility; he at least does not think it impossible for criminals to hitch their wagon to a star. He was training the girls' chorus in Easter music; again he struck a high thought, the best none too good for them. They evidently took interest and pleasure in the singing.

Sunday afternoon, as it rained, they all had association instead of exercise. As they sat in groups along the corridors, knitting, reading, chatting, even singing in low tones, I joined group after group and talked with them a few moments; just as among school girls, some were shy, some merry, some eager to tell me what they wished to do when they left. In another way they are like school girls: They sometimes become attached to individual officers, even foolishly sentimental over them. I feel it but fair to mention these trivialities, to dwell in detail upon my pleasant impressions, since I found much to condemn. The great defect of the training is overdirection, little opportunity for the exercise of judgment and self-dependence.

The Boys Borstal Institution at Borstal.

My visit to Borstal was so short that I must refer to my general statements and to the Borstal reports. I shall mention only a few things I saw or heard that especially interested me. This will be true of the other institutions that I saw but once.

Borstal has some advantages over Aylesbury. It is independent of other prisons; it has a farm and the supervision is not quite so continuous there as elsewhere. Dr. Morton, Deputy Governor and Medical Officer, told me that boys in the special grade did not run away, an excellent indication, first, that they have learned enough not to run away, secondly, that some boys do run away. An institution from which escape is impossible has a terrible discipline, fit for no human beings excepting the violently insane.

Punishments are loss of marks, breaking stone, solitary confinement, and, for gross personal violence to an officer, corporal punishment.

I was told that the boys really learn trades. Some of them become ship's cooks. I saw some excellent looking food made by the boys.

The Little Commonwealth in Dorsetshire.

This is a self-governing penal community for boys and girls con-

victed in a juvenile court; hence, under sixteen at the date of conviction. They are not received under fourteen, so that they may not be compelled to attend school. It is under the charge of Mr. and Mrs. Homer Lane, Americans, who have had experience in management of a somewhat similar institution in America. Mr. Lane has charge of the industries and employs and directs the labor. Token money is used. The boys do farm work, gardening, house-building; the girls, cooking, housework, laundry work, gardening. I think the plan is, as the institution enlarges, to add other trades. There are about thirty young persons there now, but several of the older girls have stayed after the expiration of their sentence. In each cottage are twelve to fifteen boys and girls and at least one adult. Each cottage is a home, has its own kitchen, dining room, sitting room. To make the place more home-like, there are seven or eight little children, from a year and a half to eight years old, and cats and dogs. The effect is apparently all that could be desired; I never saw children and animals more certain of a welcome from inmates and guest. The young people could be sharp enough with each other; I did not hear a cross word to the little ones or animals. There is school for the little children in the day, for the workers several evenings a week. Church attendance on Sunday (at a neighboring village) is compulsory, by a law passed in their own legislature. Also according to one of their own laws, boys may smoke when they are eighteen, girls when they are nineteen. One of the girls said that the reason for the difference was to prevent a certain girl's smoking, for whom they thought it injurious. It is, apparently, not only state legislatures that have to grapple with the problem of special legislation. In addition to the legislature, there is a court for the trial and punishment of offenders. Mr. Lane says that the girls generally make better judges than the boys, for they consider rather the individual case than the law broken.

The purpose of this experiment—a unique institution, only three years old—is two-fold. It is immediately for the benefit of the young people submitted to its discipline in self-control, self-direction and individual initiative under conditions that attempt to reproduce normal and natural life, with the presence in one dwelling of adults, juveniles of both sexes, little children. The other purpose is to introduce and spread the ideal of liberty and self-direction. Penal authorities, so far, appear not to have felt the impact of this idea; but teachers and other social workers feel the liveliest interest and frequently visit the Little Commonwealth.

St. John's Reformatory.

Catholic, at Walthamstow. Superintendent, Mr. McGee.

Boys are sent to this institution by juvenile courts. They must be twelve to sixteen on entrance and they cannot be kept after nineteen. They may be put out on license after eighteen months. There is good after-care by paid parole officers in many parts of England. Corporal punishment prevails. Usually there are few runaways, and these are nearly always caught and returned. In war time there are many runaways, due to a restless spirit, and the recruiting office is not too scrupulous about the age of well-grown boys. The superintendent told me that boys from institutions of any kind, are worse than others, in respect to sly trickery.

Many go into the army; some become ships' cooks; others are taught shoemaking and tailoring, but the iron shop is the favorite and best equipped shop; they become handy with tools, and that is all that is to be expected in the time and with the limited equipment, as I was told by Mr. Russell, Chief Inspector of Reformatory and Industrial Schools. English institutions, just as American ones, lament the lack of complete and up-to-date equipment and of trained instructors.

Two days a week there is a vegetarian diet, to save expense; they sometimes have peanuts instead of meat. The health is excellent. They pay a good deal of attention to games, and have many championship cups; they play with the team of the town school and of other reformatories at swimming, football, etc.

Two features were especially admirable. In the dining room were small tables, each seating four boys; each table had its own teapot, and the tea was poured by a boy seated at the table; this teaches good manners; also as an officer moves about the room, he can suggest correct ways more easily and quietly, and talking is not so likely to become boisterous.

The other is the student council, elected by the boys (but the Superintendent uses some influence). This council deals with minor offenses by way of advice and warning, but may not punish. It has a very good effect, especially on members of the council, and more particularly on the president. I saw a letter from a former student, now in a shop, who said he had been offered a position as foreman; at first he hesitated to accept it but remembered his success as president of the council and felt self-confidence enough to accept; he was doing well. Sometimes Mr. McGee has got a boy of weak will on the council and has found that the responsibility aids the boy greatly.

Mr. McGee told me that at the Hayes Industrial School the student court inflicts punishments, but said he was afraid to intrust so much power to the boys, lest injustice might be done.

The Princess Mary Village Homes

Church of England, at Addlestone. Superintendent, Miss Wilkinson.

The superintendent is a member of the Board of Managers, and she chooses the staff. There are three hundred girls, most of them sent by the children's court because they are destitute or delinquent; a few are sent by patrons of the school. The average age on entering is eight to nine. They belong to the institution until they are eighteen. They generally go out about sixteen and are supervised up to eighteen. Care is taken where they are placed; usually in a family or institution to do some kind of domestic work. They are taught cleaning, cooking, laundry, sewing; a few learn gardening, bee-culture, poultry-farming. There is a school on the grounds under the Board of Education.

Cottages hold from ten to fifty-two; only one, an adjoining residence recently bought, accommodates fifty-two, and that is not full. They are clean, comfortable and simple. The dormitories are equipped with good bath-rooms where the residents bathe once a week unless the house-mother thinks it is advisable to do so oftener. Much variation is permitted in dress. The mark system prevails and they are allowed to spend some of their money, as on excursions to the sea. A bank account is opened for many. Part of the wages for two years must be sent to the superintendent, who deposits it for the girl. They may be whipped on the hand with a leather strap. They are free to run away and three did so in four years, but one of them came back the same night of her own accord. Great attention is paid to calisthenics. Girl guides are provided. Picnics, walks, and tea parties are allowed. It is a very attractive institution in its physical equipment and possesses the atmosphere of kindness and affection, and, among the children especially, happiness.

There are several special buildings: An infirmary, which serves also as a receiving cottage, where each child is kept two weeks before being put with the other children; a building for the little ones; Miss Wilkinson would like to have many come in as babies, for there is more hope the younger they come in. The large house, "Crouch Oak," bought recently, is used for girls who have much knowledge of evil; they are thus separated from the more innocent, and can be specially instructed. They bathe every day. The corridors and dor-

mitories are very pretty and are decorated in light, dainty colors; this is a part of the effort to induce love of the clean, pretty, and dainty. They are permitted to talk at the table.

And last, but surely not the least important, there is a Holiday Home, an attractive cottage, for girls on holidays or when they are out of work. A small fee is charged if they can afford to pay; there are separate bed-rooms for those who can afford to pay more. If former pupils are in the neighborhood, they often come back Sundays or on their day out. Thus, the making of a home for the girls even after they have gone to work must be very helpful to them, both for happiness and safety.

*The Boy's Home Industrial School.
Church of England in London.*

The destitute and delinquent boys under twelve are sent by the children's court. A few are also sent by patrons.

Various trades are taught. There is after-care, but not enough supervision. They are permitted to talk at meals. Corporal punishment is sometimes resorted to. Mark system is in effect, so they may spend some of their money, for example, on ball games. The boys seemed happy and not too much subdued; as we chatted with them Mr. Rogers, the secretary, showed knowledge of and interest in their idiosyncracies. He said that he did not consider the plainness of the home (which, however, appeared comfortable) a disadvantage, since they would not find such a contrast when they went out. Also, that while in many ways he would prefer the home on a farm, in some ways it was better in a city; for the boys were able to join somewhat in the life of the community; sometimes he got jobs for them with the neighbors, and he frequently sent them on errands, and they walked and played in a nearby park.

*Remand Home for Girls and for Boys Under Seven.
In London, Miss Rangecroft, Superintendent (A trained nurse).*

It struck me as an excellent idea to have a trained nurse as superintendent; she knows how properly to care for the health and cleanliness of the children. Often the little children are in a wretched condition when brought in. They bathe every day, and the wash cloths are boiled every day. Every inmate is required to go to the water-closet or be put on a chamber at fixed times, several times a day. On Christmas day, in spite of the unusual diet of a great quantity of sweets and fruit, there was not a soiled child nor bed among all the sixty-one, and think of the homes they come from! The teeth are

cleaned with a bit of rag and powder, and then the rag is burned. The building is kept very clean. The manner of the superintendent and teacher showed that they were affectionate and merry with the children. The little ones in the school seemed very happy. Sometimes the older girls were allowed in the school. But as it is only a temporary home, of course the schooling cannot be a very serious consideration. The older girls do some cleaning. Some were locked in a special corridor, with wire netting over the cells. The medical examination on entrance is not so thorough as in some American Homes of Detention; nor is there isolation for the first two weeks, to see if a contagious disease develops. But the clothing of the girl is watched and if there is syphilitic discharge, the girl is isolated or sent to a hospital. On entrance the clothing that the child wears is sterilized and washed; she is clothed in Home clothes. She wears her own when summoned to court, if they are fit to be worn, if not, the clothes are supplied from a store kept in the Home. She wears Home clothing if sent to an institution, which then returns the clothing.

Punishment is the deprivation of privileges; very rarely a girl is locked in her cell (the younger children are in dormitories), but with a book or sewing, and her regular meals are given to her.

*Remand Homes for Boys Seven to Twelve.
In London. Superintendent, Mr. Craig.*

But some boys over twelve were at the institution when I was there, as the home for the boys twelve to sixteen was full. Remand Homes are directed by the Board of Education.

Ninety-two boys; room for one hundred.

School, but with handicap mentioned.

They have calisthenics. Their play is done in a small yard. The boys do some cleaning and the place is kept clean and is clean-smelling. They have hot-air pipes in the dormitories and canvas cots. The day clothes are put into a basket, one for each boy, and are taken out of the dormitory, both for the sake of the air in the dormitory, and to prevent night escapes. A tub bath is taken once a week. The boys undergo the same treatment of teeth and clothing as they do in other Remand Homes. The superintendent told me that the school medical attendants made a thorough medical examination and isolation at first is hardly necessary; all the boys are of school age. Corporal punishment is occasionally resorted to. There are two woman inspectors.

Day Industrial School in London.

The Drury Lane School is under the direction of the Education

Department of the London County Council. The superintendent is Mr. Thomas Humphreys. It is a truancy school and the only one in London, but Liverpool has several, and other cities have one to several such schools. The children are sent by magistrates, but sometimes parents ask to have their children admitted. When the children are sent by magistrates, the parents are charged eighteen pence or two shillings a week; when they come voluntarily, one shilling is charged. But if the authorities are convinced that the parents cannot pay, they are excused from such payment. The ages are from five to fourteen years old (once one under five was admitted with his brothers and sister). They have wash rooms, bath tubs, and a small swimming pool. When they first come in, if it appears necessary, they are required to take a bath. Afterwards, they go in batches to the pool once a week. They may come at 6 a. m. and the school janitor and his wife are there to receive them. In the summer they leave at 6:30 p. m.; it was the same time formerly in winter, but while London is dark, they are dismissed at 4:30 p. m.

The first and second standard have all day school; after that, half-day is spent in school and the other half-day is spent in the shop. The boys (108 now; only two girls) scrub floors, wash dishes, etc. A band has been organized. Drill is compulsory. Printing and woodwork are taught and before the war instruction was given in metal work. Three abundant meals are served at 7:45 a. m., 1 p. m. and 5 p. m.

This is an excellent plan for the control of truants, if the home is not wholly unsuitable. It enables a working mother to have her children looked after all day.

Aylesbury State Convict, Inebriate and Preventive Detention Prisons for Women.

It is a great expense to maintain confirmed drunkards in this institution and scant results are obtained.

The preventive detention prisoners work well and are paid more than the others; they are allowed to spend their money more freely; they do their own cooking, eat and talk together. The prisoners behave well.

Holloway State Prison for Short Term Offenders (Women), London.

It is clean and pretty comfortable, though I should judge that there is not enough air in the cells when the doors are closed. The prison is rather chilly.

Elaborate arrangements are installed for the reception and bath of incomers. The clothes are dropped on a sheet, but a sheet is thrown over the head before the last garments are removed. If there are signs of skin trouble, a special bath tub is used; if of vermin, a special tub. Three flesh brushes are used for each tub and each brush is disinfected after each using; the tub is swabbed after each using. A shampoo is given. If the hair is too badly infected with nits, it is cut. A medical examination is made, but not a thorough one, by the attendant physician, a man. The observation wards are for all the ill; separate tiers are used for each kind of disease, as for tuberculosis (there is more air in cells), mental trouble, epilepsy and nits. Venereal women refoot socks which are sterilized. All this elaborate paraphernalia is for a city jail, and the city allows slums, and the contagiously diseased persons at large, to corrupt and infect the whole community and fill this and other institutions!

The inmates cook, wash, and clean for the institution. There is much government work done, for instance, laundry, mail bags, clothing for naval academy, etc.

The remand prisoners (who are awaiting trial) have separate ward, wear their own clothes, and may have their food sent in to them; they have their own sick ward.

A woman with a baby has a crib in her cell. The nursery was very attractive.

There are the usual bad features—silence and meals in the cells. And the good features are—cleanliness, care of health, work, and after-care. No one is turned out with no place to go, if she will accept assistance of the Holloway Discharged Prisoners' Aid Society, and of other institutions, for example, the Salvation Army.

The food is said to be abundant and good; I tasted some good bread and cocoa. The women at hardest labor, as in the laundry work, have tea or cocoa. Miss White, the head matron, has asked several times that all be given tea or cocoa, but it has not been granted, doubtless on the ground of deterrence. She says that the officers are kind; she spoke with kindly interest to several of the women and said rather apologetically, that she could not help getting fond of women under her care.

Ishington House of Help.

Under Holloway Discharged Prisoners' Aid Society, London. Superintendent, Miss Smith.

The house is plain, clean and comfortable. The inmates do the housework. Positions are obtained for inmates as soon as possible,

and they are trained workers, as cooks or laundresses; little trouble is found to get places for them. Miss Smith often advertises for a place for a woman who has been guilty of theft or drunkenness, but who wishes to try to do better. She never conceals the fault, but does not use the word "prison" unless directly asked. Habitual offenders are not received here. Before the women are discharged from Holloway they are asked if they wish help. Those who wish it are discussed by the governor, chaplain, matron, lady visitors, and generally Miss Smith. This board decides where the woman under consideration had better go. There are many homes of rescue for prostitutes, and also for drunkards, as Lady Henry Somerset's Homes.

Miss Smith used to have socials to which former inmates of the home were invited, but she considered their influence on women still in the home bad, so she discontinued them. Query: Hasn't she sacrificed a greater good to a lesser evil?

The women are given decent clothes while they are there and when they leave.

The Elizabeth Fry Refuge in London.

This is for discharged woman prisoners and sometimes remand prisoners, or others sent in at the discretion of the courts. It is not for prostitutes or drunkards. Nearly all of them are young women. The doors are locked at night and the inmates are really kept in. Attempt is made to train the women in domestic service and laundry; the institution takes in laundry.

The inmates wear uniforms and are given an outfit when they leave. These young women were the most smiling and rosy-cheeked that I have ever seen in any kind of an institution.

Central House.

This house is managed by the Bath Vigilance and Rescue Association. It is for girls and women in need of aid and protection, whether they are respectable or not. It serves as a clearing house to send persons to institutions, or to positions. It is used as remand home for women and girls. The home is clean and comfortable.

APPENDIX.

Scheme for a Reformatory for Girls and Young Women

This institution was proposed by Miss Lillian C. Barker, Lady Superintendent of the Woolwich Arsenal, at one time Commandant of the Women's Legion, formerly Principal of one of the London County Council Women's Institutes (an industrial school). After the war

broke out, and before going to Woolwich, Miss Barker established better cooking and more economical use of food in some convalescent camps and instituted cooking in classes in some training camps under the direction of the War Department.

The Reformatory.

Prison discipline as such should not be enforced, but the girls should be controlled in such a way as to train them in habits of self-dependence and self-respect. They should also be encouraged to retain their individuality and not become mere numbers. There should be a varied programme of work and study. Every piece of work should be strictly judged. Laziness should be carefully watched for and stamped out, after having medical opinion as to whether the physical condition is good. It must be borne in mind, also, that many of these girls are spending two of their best years in confinement. Each girl should feel herself an individual, and for each, the appropriate programme should be arranged; and each girl's work considered on its merits. The religious life should not be overlooked, but neither should it have such prominence as to create a distaste for these things. Early morning and evening should be the time devoted to this. A careful discrimination should be shown in the kinds of religious elements which enter. In the last three months girls who have earned the highest positions of trust should occasionally be allowed outside the walls, so that they may be the more fitted to take their place in the world.

Meals should not be taken in the cells, as all refinement and courtesy is thus lost. It is suggested that for this short time conversation should be allowed—an attendant being present if necessary, though it should not be taken for granted that all conversation would be lewd. It is hoped that the added interests they would get would furnish decent topics. At any rate, punishment for this could be meals apart—but not in cells. Even in the taking of meals good conduct could earn its reward, as prefects eating together and with other privileges tending towards refinement.

Cooking should be done by the girls themselves.

Mending and personal duties could be carried out before and after the set duties of the day are finished. These should be as carefully marked and of as good a standard as their other work.

Visitors, for religious purposes or otherwise, should only be allowed in the off-duty time. It should not be possible for a girl to be fetched from work or lessons.

Recreation daily, between tea and 5:45 p. m.; on Saturday and Sunday, after dinner till 5:45.

Regulation at Night. All cell doors are to be locked at 9 p. m. and the lights are to be put out. If any girl's light is put up in the night, the fact and cause should be reported to the matron or medical officer.

Classification of Girls—

A. The girls who are leaving, and those of the highest type who are not necessarily leaving at once.

B. The girls who are to supply A. They may not reach A until well on in their time of service. Promotion to Class A shall be by merit.

C. The newcomers and those of low type who make slow progress.

Privileges granted should be of an encouraging character and should mark the progress from one division to another.

Progress in work should be shown by marks judiciously given, and recorded after morning, afternoon and evening sessions, so that there is no chance for the teacher-attendant to forget. A girl should not be able to lose marks, but only to gain them so that every girl will not earn marks at each lesson, but only the deserving ones will benefit. The move from one section to another should be distinctly shown in the uniform.

Time Table. All work done under this time table should be of a very high standard, and each piece of work should have a time limit. There should be no opportunity for slacking. Each girl should do a good seven to eight hours' class work per day, some portion of it to be manual. Laziness should be paid for out of recreation—all time lost to be made up.

Class A (30 to 36 girls) —

Two girls who are to be in sole charge of all work in medical officer's house.

Two girls who are to be in sole charge of all work in the matron's flat. This is *the* highest distinction possible to be gained.

The cooking and housework in Class A is to be confined to attendants or officers and their own section of girls.

Needlework and laundry is to be taken with Classes B and C, but is to include only that connected with officers and their own section.

6:00- 7:10—Cleaning of cells, etc.

7:10- 7:30—Breakfast.

7:30- 7:45—Prayers and any announcement by the staff.

7:45-11:45—(1) 6-9 girls to cookery for staff and their own section.

(2) 6-9 girls to laundry.

(3) 6-9 girls to housework.

(4) 6-9 girls to gardening.

The time for this kind of work should be broken up into periods of one month in each. Girls should move automatically from one to two, etc. Discrimination might be shown in placing good and less good workers in each shift. Every girl in Class A should be good. The laundry, housework and gardening girls would form afternoon classes. Cookery girls would be kept busy all day with the preparation of meals, bread making, etc.

Monday, 1:45-3:45—Cookery, laundry, housewifery, or gardening demonstration.

Tuesday, 1:45-2:45—History.

2:45-3:45—Writing.

Wednesday, 1:45-2:45—Household arithmetic.

2:45-3:45—Practical health (poultices, etc.).

Thursday, 1:45-2:45—Needlework.

Friday, 1:45-2:45—English.

2:45-3:45—Drawing.

Monday, 5:45-6:45—Singing.

Tuesday, 5:45-6:45—Home nursing.

Wednesday, 5:45-6:45—Drill.

Thursday, 5:45-6:45—Needlework.

Friday, 5:45-6:45—Drill.

Cookery Course. All demonstrations should consist of theory and practice. The practical demonstration should be carried out by each girl. Each girl should cook in turn every type of dish which constitutes a practical general knowledge, such as is required from a good plain cook.

Laundry should include every process required in a trade laundry.

History. This subject should have some relation to the current events of the day, and should include industrial, social and biographical history, including the reading of newspapers, etc.

English lessons should be correlated to the above subject and include plenty of reading, set as homework to be discussed in class. Also literature of a good and simple kind should be included.

Health classes should be of such a nature as to be practically useful to the girls when they leave. The practical side, such as home nursing, infant care and health, should be taken. The theory would be received at the weekly lecture given by the Medical Officer.

Needlework should include dressmaking. This time should be spent in pattern adopting, cutting out, and practical work. This latter should be the completion of their leaving outfit, which should be begun in Classes A and B.

Drawing. If a girl cannot do freehand drawing, she should be allowed to do ruler work, and perhaps geometry to cultivate accuracy. Drawing should correlate with nature study and dressmaking, as illustration and design.

Household Arithmetic should include the study of division of income, insurance and catering. It should include knowledge of the interchange of commodities with our own colonies, etc.

N. B. For the last six months if a girl shows that she is specially adapted for any particular occupation, such as gardening, cooking, etc., she should be allowed to work a longer time at this, if her other work has reached a good standard. In every case, self-reliance and trustworthiness should be the final aim.

Class B (30-36 girls. Average time, nine months.)—

6:00- 7:10—Cleaning of cells, etc.

7:10- 7:30—Breakfast.

7:30- 7:45—Prayers, etc.

(1) 7:45-11:45—9 girls to cookery for the girls.

(2) 7:45-11:45—9 girls to laundry for the girls.

(3) 7:45-11:45—6-9 girls to housework for the home.

(4) 7:45-11:45—6-9 girls to gardening.

Each girl to have one week or one month, as thought best, at each type of work, and to move automatically from (1) to (2), etc. Each shift is to contain good, bad, and medium workers. The laundry, housework and gardening girls are to form the afternoon classes.

Monday, 1:45-3:45—Needlework.

Tuesday, 1:45-2:45—History.

2:45-3:45—Writing.

Wednesday, 1:45-2:45—Drawing.

2:45-3:45—Needlework.

Thursday, 1:45-3:45—Demonstration in cookery, laundry, housewifery or gardening.

Friday, 1:45-2:45—Household arithmetic.

2:45-3:45—Nature study.

Monday, 5:45-6:45—English or reading.

Tuesday, 5:45-6:45—Drill.

Wednesday, 5:45-6:45—Singing.

Thursday, 5:45-6:45—Drill.

Friday, 5:45-6:45—Health lecture.

Cookery should include all the principles of cooking and each girl should take her turn at each kind of work. This should include all cooking necessary for sections B and C.

Laundry work should include all the types of work and include sorting, packing, overseeing, etc.

Housework should be of a general kind, but the chief principles should be carefully taught.

History. This should include the making and expansion of the nation, growth of colonies, etc.

Household Arithmetic should correlate with cooking, needlework, housework, laundry, etc.—cost of materials, labor, etc.

Drawing should correlate with dressmaking and nature study.

Needlework should be the learning to cut out, make up and adapt patterns. Also to make the underclothes they will require on leaving. Knitting should be introduced and could form very good homework.

Class C (30-36 girls. Average time, six months.)—

For the first three months, or until special industry is shown, gardening should be the chief manual labor, after that laundry work, keeping about 20 or 24 girls in the garden and 10 to 12 in the laundry daily. The same time table for other lessons to be followed.

6:00- 7:10—Cleaning of cells.

7:10- 7:30—Breakfast.

7:30- 7:45—Prayers, etc.

Monday, 7:45-11:45—Gardening.

1:45- 2:45—Arithmetic.

2:45- 3:45—Theory of gardening.

Tuesday, 7:45- 9:45—Needlework.

9:45-10:15—Drill.

10:15-11:45—Reading and writing.

1:45- 3:45—Gardening.

- Wednesday, 7:45-11:45—Gardening.
1:45- 2:45—Theory of cooking.
2:45- 3:45—Nature study.
- Thursday, 7:45- 8:45—Arithmetic.
8:45- 9:45—History.
9:45-11:45—Drawing.
1:45- 3:45—Gardening.
- Friday, 7:45-11:45—Gardening.
1:45- 3:45—Needlework.
- Saturday, 7:45- 9:45—Needlework.
9:45-10:15—Drill.
10:15-11:45—Reading and writing.
- Monday, 5:45- 6:45—Drill.
- Tuesday, 5:45- 6:45—Theory of house manage-
ment.
- Wednesday, 5:45- 6:45—Health or home nursing.
- Thursday, 5:45- 6:45—Singing.
- Friday, 5:45- 6:45—Theory of laundry, simple.

Needlework should include the learning of all simple stitches, cutting out of simple patterns and garments. It should include the making of garments to be worn while in the institution.

History should be taught by means of biographies.

Reading and Writing should include the teaching of English and literature.

Arithmetic. The four rules and their application to money, time and measures. It will probably be found possible to have a higher grade for some of the girls.

Drawing should be correlated with nature study and needlework.

House Management lessons should include practical demonstration of cooking and housework; and in laundry, simple experiments should be shown to demonstrate good and bad processes and their effect on materials.

NOTES ON TIME TABLES.

These are only tentative suggestions, but the proportion of time given to each subject should be kept. Homework in sufficient amount should be given and carefully marked—any laxity should be punished by curtailment of that in which the individual girl finds most pleasure. Solitary confinement should be paid for by extra work, otherwise lazy girls will enjoy it.

Staff of Teachers for the three sections—

Three for cookery, two instructors and one assistant. Same for laundry, for needlework, for gardening.

Two for house management.

One for drill.

One for nature study and drawing.

One for arithmetic and English.

One for singing.

Staffing. To make this satisfactory, the staff should be of a more technically fitted type than at present engaged in reformatories. There would be a greater social difference between girls and teachers and this would inspire respect. To gain this type a higher salary would have to be paid to obtain the greater qualifications, but these would act as teachers as well as guardians. This need not entail greater expense, as a lesser number would be required. The better paid and better equipped teacher should be able to take all lessons, whether of the school or technical type.

The disciplinary work should, as far as possible, be carried out by means of prefects chosen from the girls themselves, and given their positions as a reward of good behavior. These of course should be wisely supervised to see that no spirit of favoritism should arise. In each section the girls should work in pairs, a girl who has earned promotion with one who is difficult. Each teacher should be responsible for the discipline of the class room, or wherever she is on duty.

The head of the whole system should be a woman with good educational qualifications. Under her should be, on the one hand, a woman medical officer to superintend the physical well-being and, on the other, a matron to be responsible for the domestic well-being of the institution. The rest of the staff should be directly controlled by the governor and be under her immediate direction, and should consist of teachers having certificates and diplomas for the various subjects which they are to teach.

The salaries suggested are:

Residents, with quarters and board—

Woman Governor—£250-£300, by £5 yearly increments.

Medical Officer—£150-£200, by same.

Matron—£100, by same.

Four Under Matrons—£30-£50, by £2 yearly increments.

Two Cookery Instructors—£80-£100, by £4 yearly increments.

One Cookery Assistant—£ 50-£ 70, by same.

Two Laundry Instructors and One Assistant—Same as for Cookery.

Two Household Instructors—Same as Cookery Instructor.

One Gardener Instructor and One Assistant—Same as for Cookery.

Visiting Staff, with no emoluments—

One Drill Instructor.

One Nature Study and Drawing.

One Arithmetic and English—Each £ 30-£ 50, by £ 4 yearly increments.

One Singing—£ 20-£ 40, by £ 4 yearly increments.

THE NEED, THE PROPRIETY AND THE BASIS OF MARTIAL LAW, WITH A REVIEW OF THE AUTHORITIES^a (CONCLUDED)

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In West Virginia, in the Spring of 1912, a strike of coal miners was called in certain parts of Kanawha County. For a time there was no disorder, but, when the mine owners began to bring in men to take the place of the striking miners, clashes between the men employed as mine guards and the miners and their sympathizers were frequent. As the strike progressed, the disorders grew worse, extending to murder and arson.

In July, the Governor sent the military forces of the state into the district to aid the civil authorities to maintain order and to protect life and property. The military, from time to time, made arrests, and the persons so arrested were turned over to the civil authorities, and promptly gave bond and returned to the troubled districts, pending their hearings or trials. Disorder increased. The Governor urged the local authorities to convene a special grand jury to deal with the situation, but was told by the court officials that they had no evidence and could get none, to warrant the call of a special grand jury, and that the county officers themselves had no evidence against the lawbreakers, and had no funds to employ persons to collect the evidence to present to the grand jury. The Governor responded by placing his contingent fund at the disposal of the county officers to defray this expense. No action or efforts, worthy of mention were taken by the county authorities to suppress the disorders. Disorder continued. Each of the contending factions was armed with modern weapons, and men traveled the districts, in many instances, carrying high-power rifles with bayonets fixed. In September a battle of considerable proportions was reported as pending between the contending forces. The law gave the Governor no control over the county officials. Under the constitution, he was vested with the chief executive power of the state, made a commander-in-chief of its military force, and authorized to call out the same to execute the laws, suppress insurrection and repel invasion, and charged with the care that the laws be faithfully executed. The legislature, by special act, had given the Governor

^aRead before the American Society of Military Law, Chicago, Sept., 1916. See last number, pp. 167 ff.

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power, in event of invasion, insurrection, rebellion or riot, at his discretion, to declare a state of war in the towns, cities, districts or counties where the disturbance existed. The constitution contained the usual bill of rights, but provided that the habeas corpus should never be suspended, and that persons accused or tried, should be tried by a jury of the county, in which the crime was committed; that the military should be subordinate to the civil power, and that no citizens, unless engaged in the military service of the state, should be tried or punished by any military court for any offense that is cognizable by the civil courts of the state. It contained also a general provision that the provisions of the Constitution of the United States and of this state are operative alike in a period of war as in time of peace, etc. The state was face to face with the condition that demonstrated the truth that

"The idea of government at all times, by simple force of law, which we have been told is the only admissible principle of republican government, has no place but in the reveries of those political doctors whose sagacity sustains the admonition of experimental instruction."²⁷

The practical question, could the Governor, under the power and authority conferred upon him, by the constitution and the law, use the means necessary to end the trouble and restore the constitution and the laws, or did the two provisions of the constitution, to-wit: "The military shall always be subordinate to the civil," etc., and the declaration that the provisions of the constitution are operative alike in a period of war as in time of peace, control all the other provisions of the constitution? or, to state it differently, Were the provisions above set out, to receive a literal interpretation, when the other provisions of the constitution were practically overthrown in the disturbed districts? It was the same question that was considered in 1861, and presented to the Supreme Court in the *Prize Cases*, 2 Black: "Could a sovereign exercise belligerent rights against its own citizens, in an insurrection of such proportions as to warrant the governor to declare a state of war exist in the district?"

The Governor took the position, that the powers conferred upon him by the constitution and under the law, were the powers of a co-ordinate branch of the government, and that in exercising those powers, he had the right to use the means necessary to secure the end; that a proper construction of the constitution, to give force and effect to all these provisions, warranted his position. To prevent the battle reported pending, the Governor, on September 1, declared a state of war to exist in the district, proclaimed martial law,

²⁷28 *Federalist*.

and put the military forces in charge. All persons within the district, including partisans of each faction, were disarmed, all persons residing out of the district who had been acting as mine guards therein, were deported, and several non-residents who were in the state acting as mine guards in violation of the state law, were tried by a military commission and confined in the penitentiary. Order was apparently restored. The martial law proclaimed was withdrawn in October, and disorder again broke out. The second proclamation was issued in November, and the military again took charge. This proclamation was not withdrawn, but order was apparently restored and the military withdrawn in December. The Governor released the persons, who had been sentenced by the military commissions, with hope that no further disorder would occur. A short time thereafter, disorder again occurred, which continued with more or less violence until February, when a pitched battle occurred in which several persons lost their lives. Martial law was again declared, the military took charge of the situation, arrested a large number of persons and restored order. During this period no person was tried by the military commission. The persons arrested were confined in the military camp and in some instances in the jails of the counties, pending a restoration of order. The action of the Governor was widely discussed and finally resulted in an investigation by a special committee of the United States Senate. With the action of the Governor, in declaring martial law, and the measures taken thereunder, to restore peace, this article does not deal, as it is believed that it is a political question. The practical question was, "Was the state without power to sustain itself in a crisis, in which its laws and constitution were being set at naught?" The declaration of a state of war and martial law did not create a condition, but only recognized it, as it existed. The condition as it existed, showed that courts could, for some purposes, be open, and were open, but were inadequate to protect the citizens in their constitutional rights, and were as effectually closed for that purpose, as if closed by force. It was a condition that demonstrated that a literal construction of the constitution would result in anarchy, and that a construction that would harmonize each of its parts would restore the constitution and preserve law. The question was presented to the Supreme Court in two cases: *State ex rel Mays and Nance*, 71 W. Va., 519, and *Ex Parte Jones*, 71 W. Va., 567. The syllabus of each case follows:²⁸

State ex rel. L. A. Mays et al.

²⁸Robinson, J., dissenting.

"The governor of this state has power to declare a state of war in any town, city, district or county of the state, in the event of an invasion thereof by a hostile military force or an insurrection, rebellion or riot therein, and, in such case to place such town, city, district or county under martial law.

The constitutional guaranties of subordination of the military to the civil power, trial of citizens for offenses cognizable by the civil courts in such courts only and maintenance of the writ of habeas corpus are to be read and interpreted so as to harmonize with other provisions of the Constitution, authorizing the maintenance of a military organization and its use by the executive to repel invasion and suppress rebellion and insurrection, and the presumption against intent on the part of the people, in the formulation and adoption of the Constitution, to abolish a generally recognized incident of sovereignty, the power of self-preservation in the state by the use of its military power in cases of invasion, insurrection and riot.

It is within the exclusive province of the executive and legislative departments of the government to say whether a state of war exists and neither, their declaration thereof, nor executive acts under the same, are reviewable by the courts while the military occupation continues.

The authorized application of martial law in territory in a state of war includes the power to appoint a military commission for the trial and punishment of offenses within such territory.

Martial law may be instituted, in case of invasion, insurrection or riot, in a magisterial district of a county and offenders therein punished by the military commission, notwithstanding the civil courts are open and sitting in other portions of the county.

Acts committed in a short interim between two military occupations of a territory for the suppression of insurrectionary and riotous uprisings and such in their general nature as those characterizing the uprising are punishable by the military commission within the territory and period of the military occupation."

Ex Parte Jones, Supra.

"The principles and conclusions of law announced in *State ex rel Mays v. Brown, Warden*, and *State ex rel Nance v. Brown, Warden*, having been re-examined, after thorough argument and consideration, are approved and reaffirmed.

"A state of war having been declared in any part of the state on an occasion of insurrection, the war power of the state in the form of military rule, defined by the usages of nations, prevails in the territory subject to the proclamation, excluding the civil powers as to offenses, if the executive so order, while the peace powers of government under civil law prevail elsewhere.

"In such case, the governor may cause to be apprehended, in or out of the military zone, all persons who shall wilfully give aid, support or information to the insurgents, and detain or imprison them, pending the suppression of the insurrection.

"Sections 6, 7, 8 and 9 of chapter 14 of the Code, authorizing such arrest and imprisonment, do not violate the provisions of the state and federal constitutions, inhibiting deprivation of liberty without trial by jury, and are constitutional and valid.

"Being so, such arrest, detention and imprisonment, by virtue of said statute, are effected by due process of law within the meaning of section 10

of Article III of the Constitution of the State and the Fourteenth Amendment to the Constitution of the United States."

During the third period of martial law the Governor caused a Socialist paper, which was being widely circulated in the proclaimed districts, to be suppressed by his military forces. After the proclamation was withdrawn, an action for damages was brought by the Socialist Printing Company against the governor, and the military officers, who acted under his instructions in closing the plant and suppressing the paper. A plea was filed by the defendants denying malice and abuse of power, denying that any damage was done to the plaintiff further than to suppress the publication, and the trial court sustained a demurrer to the plea and held it insufficient. Thereupon an application was made to the Supreme Court for a writ of prohibition, which was granted in the opinion following:²⁰

"The office of governor is political and the discretion vested in the chief executive by the constitution and laws of the state respecting his official duties is not subject to control or review by the courts. His proclamations, warrants and orders made in the discharge of his official duties are as much due process of law as the judgment of a court.

"The governor cannot be held to answer in the courts in an action for damages resulting from the carrying out of his lawful orders or warrants issued in good faith in discharge of his official duties.

"By virtue of the authority vested in the governor by the constitution and laws of the state, he has authority as commander-in-chief of the military forces, pending the existence of martial law covering any portion of the state's territory, to cause to be arrested and imprisoned until peace is restored, any person whom he has good reason to believe is aiding or encouraging disorder and rioting; and he may also temporarily suppress any newspaper published in the state, having a circulation in the martial zone, and containing articles which he has reason to believe will encourage a continuation of the disorder therein."

In Georgia in 1912, a portion of the militia of Georgia was ordered out by the City of Augusta, charged with the duty of restoring order and protecting property from mob violence. Three citizens were killed by the soldiers in the discharge of their duty. This action did not come before the courts of Georgia for decision, but the soldiers were tried by a court martial and acquitted. The Governor, in approving the finding, stated:

"When soldiers are called upon by civil authorities, it is to be assumed that the soldiers were considered needed. These citizens met their death by refusing to obey the lawful orders of the guards to halt, and after repeated warnings not to attempt to pass the lines had been given them by soldiers. Law and order in this commonwealth must be maintained.

"JAS. M. BROWN, Governor."

²⁰*Hatfield et al. v. Graham*, 73 W. Va. 759; 53 L. R. A. 175.

In Ohio in 1913, certain portions of the southern section of the state were visited by a disastrous flood, particularly the City of Dayton. The troops were called out, martial law was established, and the military took supreme charge, establishing military courts, and tried numerous persons for violation of civil laws and military regulations.⁸⁰ The civil authorities co-operated as far, as possible, with the military and admitted their inability to protect life or property. The City of Warren, Trumbull County, was also visited by the flood, but martial law was not declared therein. The military assisted, however, in helping to preserve order, and its action in making an arrest came before the Common Pleas Court of Cuyahoga County, in an application of Edward S. Smith for habeas corpus,⁸¹ which held as follows:

"1. The commanding officer of troops of the Ohio National Guard, when such troops are ordered into active service by the governor, in cases of riot, disorder, invasion, or overwhelming disaster, may make reasonable regulations for the protection of life and property, whether martial law has been proclaimed or not.

"2. Where a portion of a city has been visited by a disastrous flood, and much property has been temporarily abandoned by reason thereof, an order by the commander of troops excluding all persons from such flooded district without a pass was a reasonable and proper regulation.

"3. Troops so on duty under such circumstances might properly arrest a person who sought to force his way across their line, whether martial law had been declared, or whether the troops were called in aid of the civil authorities only; or they might forcibly eject him, using no greater force than necessary.

"4. After such arrest, the offender might be brought to trial before a military commission if martial law were declared, but if not, he should be turned over to the civil authorities.

"5. Upon such a prisoner being turned over to the civil authorities, the jurisdiction of the military commander ceased; and the validity of an ordinance under which he is subsequently arraigned and tried by the civil authorities may be tested by habeas corpus."

This case afterwards went to the Court of Appeals of the Sixth Circuit of Ohio, which is now the court of last resort except in special matters, and by that court was affirmed without comment.

In Colorado, in 1913 and 1914, there was a recurrence of industrial troubles, and the Governor proclaimed martial law, and the military forces of the State of Colorado were put in the field. There was more or less disorder, during the period of martial law, with the final result that in the Spring of 1914, the Governor of Colorado called upon the President of the United States for federal troops to help restore order. In response to this request, in April, 1914, the President sent

⁸⁰Report Adjutant-General, State of Ohio, 1913. pp. 342-7.

⁸¹The Ohio Law Reporter, Vol. XI, No. 25, p. 497.

federal troops into the State of Colorado, and issued a proclamation warning all persons engaged in, or connected with, the domestic violence and obstruction of the laws, to disperse and retire peacefully to their respective abodes, on or before the 30th of April following. Under date of May 1, 1914, a proclamation was issued under his authority, directing all persons not in the military service of the United States, who had arms and ammunition in their possession, or under their control, to deliver them to certain designated officers, and to take receipts therefor. This latter proclamation was followed by one under date of May 6th, charging the officers and soldiers of the United States Army with the enforcement of the proclamation of disarmament, and to take into their possession all arms, ammunition, etc., found upon the person of any individual. The latter proclamation was published, but no action seems to have been taken under it. There was no disorder while the federal troops were present, and order was finally restored. The measures taken by the President to restore order were mild, but the question as to the authority exercised by the United States forces in Colorado was raised by the mine operators, having reference to certain restrictions exceeding those of the laws of Colorado placed upon the importation of so-called strike-breakers. The question was taken up with the Secretary of War, who, in reply to a letter from a member of the House of Representatives of Colorado, advised him as to the basis of the federal authority, concluding his letter with the statement "that he (the President) has full power and authority to do whatever he finds necessary to restore public order and maintain it.

Ex Parte McDonald et al., Montana, 143 Pacific, 947.

This case arose out of a proclamation made by the Governor of Montana declaring Silvergold County in a state of insurrection and proclaiming martial law. The petitioner, McDonald, had been arrested and was being detained by the military authorities. A second petitioner, Gillis, had been committed, under a commitment by a military officer, acting as a summary court. The court held, that under the constitutional provision providing that the governor shall be commander-in-chief of the militia and have power to call out any part or the whole to aid in the execution of laws or suppress insurrection, the governor alone has the authority to determine when a state of insurrection exists, and his determination could not be reviewed by the judicial authorities; where the military is called out by the governor to put down an insurrection, the military forces operate as a sort of major police, for the restoration of the public order and may arrest

rioters and hold them until the insurrection is put down, before they are turned over to the civil authorities. The power to suspend the writ of habeas corpus is legislative, and the governor of the state, upon declaring martial law where insurrection exists, cannot suspend the writ. The military authorities, in case of insurrection, which is not an act of sovereignty, as is the declaration of war, are not empowered to punish the defendants without jury trial; nor can a jury trial be denied upon the ground that a jury of the vicinage would not do their duty, for the state may, if necessary, exercise its right to change of venue; and made an order denying the release of petitioner, with leave to re-petition after thirty days if at that time they had not been delivered to the civil authorities and the courts were then open and able to execute their processes.

The court, in the course of its opinion, in discussing the governor's authority to proclaim a state of insurrection, said:

"In a case of insurrection it is not merely the local law that is set at naught; it is the law of the state. Our constitution places the responsibility for the maintenance of that law exactly where it belongs: . . . and it is the duty of this court to refrain from interference or question, so long as the governor remains within the limits established by the constitution. So much being true, the recitals in the proclamation that a state of insurrection existed in the county of Silvergold cannot be controverted, but must be taken as final and conclusive. For reasons equally cogent, we must presume the conditions thus proclaimed to continue until by executive order or proclamation it shall be otherwise declared."

From these premises the court continues:

"We are convinced that the theory which accords the least power to the governor and to the militia in cases of insurrection is that he acts as a civil officer of the state, and that the military forces under him operate as a sort of major police for the restoration of public order."

The court then quotes at length from the *Moyer* case, and the *Moyer v. Peabody* case, concluding:

"The reasoning of this case, properly understood and strictly confined to its proper sphere, we take to be unanswerable and to be entirely applicable to the right and duty of the governor and militia, under the constitution and laws. The release of McDonald and his co-petitioners was therefore denied, but since justification is a necessity, and since it cannot obtain beyond the period of such necessity, we granted leave to re-apply, having in mind that the course of events might or might not demonstrate the detention of these petitioners beyond the time indicated to be unnecessary."

It is hard to reconcile these conclusions with the first holding. If the constitution imposes this duty upon the governor, and it is true, as stated in the opinion, that local and state laws are set at naught, and that duty is imposed upon the governor to restore these laws,

(and, incidentally, the constitution) then the means necessary to the end are to be used by him under the responsibility of his office and not to the court. The expression used by the court, that the military, in such condition, under such circumstances, operates as a "sort of major police" is a new expression, and the conclusion that the justification of the governor's act "is a necessity and it cannot obtain beyond the period of such necessity, we have granted leave to reapply," etc., suggests this query: Suppose at the end of thirty days the insurrection still exists, and in the opinion of the military officers the detention of these persons were necessary, upon re-petition would the court hold that the conditions set out in the proclamation continue until by executive order it shall be otherwise declared, or would the officers upon return to the habeas corpus, be put to proof of the conditions?

The record in this case does not show that there was an attempt to suspend the habeas corpus; upon the contrary, the record shows that a writ was issued and a return made by the military authorities and all that is was necessary for the court to hold was, whether or not the return was sufficient or insufficient, and it was not necessary to decide that the governor had or had not the right to suspend the writ of habeas corpus, as the record shows no attempt to suspend it.

Further in its opinion the court held:

"When in domestic territories the laws of the land have become suspended, not by executive proclamation, but by the existence of war, the executive may supply the deficiency by such form of martial law as the situation requires, but we deny that insurrection and war are convertible terms, and that an insurrection is an act of sovereignty, as is a declaration of war," and quotes an excerpt from the majority opinion delivered by Mr. Justice Greer, in the Prize Cases. The excerpt is not from the part of the opinion that deals with the question of insurrection, but the part of the decision discussing the property rights of individuals within rebel territory.

A reading of the opinion will not sustain the conclusion of the Montana court. It will be borne in mind that the points in the Prize Cases were, "Had the president the right to institute a blockade of the ports in possession of persons in armed rebellion against the government, on principles of international law?" and "Was the property of persons domiciled or residing in those states, a proper subject of capture?" A majority of the court held in the affirmative and four of the judges dissented.

Mr. Justice Greer, in his opinion, stated:

"War has been well defined to be 'that state in which a nation prosecutes its right by force.' Insurrection against the government may or may not culminate in an organized rebellion, but a civil war always begins by an insurrection against lawful authority of the government. A civil war is never solemnly declared, but becomes such by its accidents—the number, power and organization of the persons who organize and carry it on.

"As a civil war is never publicly proclaimed (*eo nomine* against insurgents), its actual existence is a fact in our domestic history which the court is bound to notice and to know. The true test of its existence, as is found in the reading of the common law, may be thus summarily stated: When the regular course of justice is interrupted by revolt, rebellion or insurrection, so that the courts of justice cannot be kept open, civil war exists and hostilities may be prosecuted on the same footing as if those opposing the government were foreign enemies invading the land."

The dissenting opinion of Mr. Justice Nelson concludes that no civil war existed between this government and the states in insurrection until recognized by the act of Congress on July 13, 1861, and that prior to that time, any action of the President as commander-in-chief of the military forces of the United States, either under the Constitution or acts of Congress passed authorizing him to call out the militia of the several states, is an exercise of power under the municipal laws of the country and not under the laws of nations; or, to state it differently, if the battle of Manassas had been fought a few days earlier, it would, under his holding, not have been a real battle fought under the laws of war, but the men who took part therein would have been required to have justified their action on the ground that the force used was necessary, and this necessity passed on by a court.

Insurrection is defined as:

"A rising against civil or political authority, or the established government, open and active opposition to the execution of law in a city or state. Rebellion is an extended insurrection and revolt."³²

"The term 'insurrection' is one in a large measure incapable of exact legal definition, more or less elastic in its meaning, and the constitutoinal officer vested with the power of ascertaining its existence and exercising the necessary military power and constraint to suppress it is vested with a broad discretion, to be exercised under the exigencies of each particular occasion, as the same may present itself to his judgment and determination."³³

"When evil spreads, affecting great numbers in the city or provinces, or subsists in such manner that the sovereign is no longer obeyed, such a disorder and custom is more particularly distinguished by the name of insurrection."³⁴

³²Webster.

³³1 Kent's Commentaries, page 283. Storey's Constitution, Sec. 1491.

³⁴Vattel's Law of Nations, p. 485.

"Insurrection closely resembles rebellion, of which, in fact, it is an incipient form, in that it is a movement directed against the existence of a government. It is distinguished from rebellion in that the movement is less extensive and its political or military organization is less highly developed."

"In localities where the insurrectional movement has become so formidable as to make it necessary to resort to armed force with a view to its suppression, all residents of the territory in insurrection become liable to be treated as enemies."⁸⁵

"An insurrection is a rising against civil or political authority; the open and active opposition of a number of persons to the execution of the law in a city or state; a rebellion and revolt."⁸⁶

"In common parlance there is little or no difference between mutiny and insurrection."⁸⁷

"The term 'insurrection' is used in the statute, making it a capital offense for any free person to aid or assist in any insurrection or rebellion, or intended insurrection or rebellion of slaves, is synonymous with the term rebellion as there used."⁸⁸

The question then presents itself, when an insurrection ceases to be an insurrection and becomes a rebellion, and when a rebellion assumes the proportions of a war, and from whence comes the authority for the holding, that the authority to put down insurrection is not an incident of sovereignty. It is believed, that insurrection and rebellion are so closely allied that, where one leaves off and the other begins can never be definitely concluded, and that the question upon principle is one for the political department of the government to decide and not a question of fact to be decided by a court.

Another authority cited and relied upon by the court, is the case of *Smith v. Shaw*, found in 12 Johnson.⁸⁹ It is believed that this case is not in point, as it does not involve rights exercised under executive order in a period of martial law, but was an action of trespass for the detention by the commanding officer at Sackett's Harbor, of the plaintiff, who had been committed by two officers on charges in writing, one of which was that he was a spy. The defendant justified on the ground that he was the commanding officer of the post, and under the Articles of War, the men being committed under charges signed by an officer, he was required to hold them. The proof in the case showed that the plaintiff had been brought before the commanding officer, who promised to investigate his case, and from this fact it was contended that the defendant sanctioned the arrest, with the result

⁸⁵22 Cyc., p. 1452, and cases there cited.

⁸⁶*Allegheny County v. Gibson*, 90 Pa. 35; Am. Repts. *Spruill v. North Carolina Mutual Life Insurance Co.*, 46 N. C., 126.

⁸⁷*Chicago v. New Orleans Ins. Co.*, 33 Am. Dec. 180.

⁸⁸*State v. McDonald* (Ala.), 4 Port. 449, 455.

⁸⁹Compare with *In re Vallandigham*, Federal Cases.

that the jury brought in a verdict for the plaintiff, the court further holding that the plaintiff, being a citizen, could not be a spy.

It is believed that the foregoing are all of the decided cases that bear directly upon the rights of military forces under martial law.

The cases of *Mitchell v. Harmony*, in 13 Howard, 113, and *Mitchell v. Clark*, 110 U. S. Reports, referred to and relied upon by text writers and courts, defining the rights and liabilities of military officers during martial law periods, are not in point.

The case of *Mitchell v. Harmony* (*supra*) was an action for damages brought by the plaintiff for property taken by the defendant, who was in command of a military expedition in Mexico. The plaintiff was a citizen of the United States, and had accompanied the expedition by permission. The defendant attempted to justify the taking. The court held:

"Private property may be taken by a military commander to prevent it from falling into the hands of the enemy, or for the purpose of converting it to the use of the public, but the danger must be immediate and impending, or the necessity urgent for the public service, such as will not admit of delay, and where the action of the civil authority would be too late in providing the means which the action calls for.

"The facts as they appeared to the officer must furnish the rule for the application of these principles. But the officer cannot take possession of private property for the purpose of insuring the success of a distant expedition upon which he is about to march."

In the latter case, *Mitchell v. Clark*, *supra*, the military authorities in St. Louis during the Civil War required the defendant to pay certain moneys due from the defendant to the plaintiff for rent. After the war, the plaintiff sued the defendant, who plead payment to the military authorities, an act of Congress indemnifying persons acting under the color of authority from the United States during the rebellion, an act of Congress prescribing a statute of limitation upon actions against persons acting under such authority in putting down rebellion, and that the case at bar was barred. The opinion of the court did not discuss the question of martial law, but was given up to the discussion of the rights of Congress to pass the act relied upon, the court holding:

"An act of indemnity by Congress, passed after an event which in effect ratifies what has been done, and declares no suit shall be sustained against the party acting under color of authority from the United States during rebellion, is valid so far as Congress should have conferred such authority before,"

and held that the case at bar presented a federal question; that the statute of limitations relied upon was valid, and that the plea of the

defendant that the rents had been confiscated by the military authorities, was good.

Whether these two opinions can be reconciled is not within the scope of this paper, but it is certainly believed that neither of them are in point either for or against the right of the United States or of a state to declare martial law, or the actions of officers taken under it.

CONCLUSION.

It is submitted that the basis of martial law is found in the inherent power of a sovereign state to preserve itself and its territory. Vattel lays it down that a sovereign state not only has this power, but that it is its duty to preserve itself and all of its territory. Its justification is in the necessity of the case. In using the word "justification," it must be borne in mind that it does not necessarily mean a justification before a court. Political actions of every nation or country are justified at the tribunal of public opinion, and by history. Under our system of government there are co-ordinate departments, equal in their respective spheres. The Constitution of the United States provides that (and those of the several states have practically the same provision), "the executive power shall be vested in the President of the United States." There is no attempt to limit or define the executive power. What, then, is the executive power of the United States? The answer is that the executive power of the United States (or of a state within its proper sphere), is the same as the executive power of any sovereign country, exercised, however, by a responsible agent—not a monarch—responsible not to the judicial department of the government, but in the manner provided by the constitution and to the people. The Constitution imposes upon the President the duty of putting down insurrection, rebellion, invasion, etc. It does not say how it must be done. Upon what theory could we look to the acts of the legislative department to see how he should perform this duty? Upon principle we should not.

"The measures to be taken in carrying on war and suppressing insurrection are not defined. The decision of all such questions rests wholly in the discretion of those to whom the substantial powers involved are confided by the constitution."⁴⁰

Upon what theory should the executive answer to the judiciary as to the necessity of his acts? It is contended that this is a great power, and that it can be abused. This is true of all powers, and instances are not wanting to show that the powers of the other

⁴⁰*Stewart et al. v. Bloom, Kahn, et al.*, 11 Wallace, 20, Law Ed. 176.

branches of the government have been abused; but this fact does not take away or limit the power.

It is contended that this power is inconsistent with the Bill of Rights. Granted! In time of riot and insurrection the citizen who is not engaged therein is deprived of many of his constitutional rights. They are denied to him by the local authorities, for the reason that they cannot protect him. Has he no rights?

The declaration of a state of war and martial law by a state does not overthrow the constitution; it simply recognizes a condition that exists in the particular locality, and announces to the community that the civil authorities are no longer able to cope with conditions as they exist, and that war measures will be resorted to, to restore the constitution. The extent of the use of these measures rests with the department that puts them in force, and it is not for the branch of the government that has demonstrated its inability to control the situation to handicap another branch that is charged with the duty of restoring law and order. This construction of the constitution harmonizes all of its provisions, and is consonant with the canons of construction. A narrower view will lead to the result that the state or nation will find itself face to face with war and insurrection on the one hand, and a constitutional provision on the other, that ties its hands, and a condition that could only be remedied by the call of a constitutional convention to cut the Gordian knot.

THE ADMINISTRATION OF MILITARY JUSTICE AT THE UNITED STATES DISCIPLINARY BARRACKS, FORT LEAVENWORTH, KANSAS

GEORGE V. STRONG¹

Contrary to what appears to be the general opinion of the American public, wide-spread and long-standing conditions in this country usually are very truly reflected in the army, so it is not strange that the growing protest against the delay in the administration of justice in civil life should find its counterpart in the service. For years there has been an increasing effort on the part of the military authorities to expedite the trial of soldiers charged with military or criminal offenses. Minor offenses, as a rule, have been handled promptly and efficiently by summary courts, the cases usually having been disposed of within twenty-four or forty-eight hours from the time of commission of the offense. The more serious offenses, those properly triable by general court-martial, have presented a more difficult problem due to circumstances over which the War Department had little or no control. Large geographical departments, small, scattered, and frequently isolated posts, shortage of officers, etc., all operated to increase the time spent by an offender in confinement before trial.

To combat the effect of these conditions and in an effort to expedite the trial of men whose offenses were of such a nature as to render their confinement at the United States Disciplinary Barracks at Fort Leavenworth probable, the War Department, in January, 1917, established the Disciplinary Barracks as a separate general court-martial jurisdiction, and directed that all men charged with desertion, who surrendered or were apprehended in the Central and Southern Departments, and who, upon conviction, would probably be dishonorably discharged from the service and confined at that institution, be sent there for trial.

This action by the War Department probably was taken, primarily, to expedite trials and to reduce expenses, it being obvious that if a man were to be confined at the Disciplinary Barracks the cost of transportation there would be the same whether before or after trial, and if the trial could be expedited by transfer to that place before trial, the consequent saving in rations and clothing alone would justify the increased work thrown upon the Disciplinary Barracks authorities. It was considered probable that, other things being equal, the courts meeting daily and under the same roof as the reviewing authority,

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the delays usually encountered by sending records several hundred miles by mail to a reviewing authority would be minimized, if not entirely done away with, and discipline would be improved by punishment being more promptly awarded. The results have fully justified the expectations of the War Department; exact figures are not available, but conservative estimates place the average saving per man, for food and clothing alone, for the cases handled under this system, at about \$20.00. Since about 500 cases were handled during the first four months during which this scheme was in operation, the saving to the government has been considerable. The average period spent awaiting trial and result of trial has been greatly reduced, but exact figures for accurate comparisons with other jurisdictions are not yet available.

From the standpoint of the scientific administration of punishment, the War Department scheme outlined above has had one interesting development, new to the service, but following closely the lines of development in the more advanced and better administered courts in civil life.

The Department of Psychiatry was established at the Disciplinary Barracks in 1914 and has as its head the Medical Examiner, Major Edgar King, Medical Corps, United States Army, an officer of sound judgment and remarkable ability as a psychiatrist. All men sent to the barracks for confinement or for trial are, upon arrival, or shortly subsequent thereto, given a searching examination by the medical examiner. This examination is divided into two parts and is intended to determine the man's physical, mental and moral fitness for further service. The physical examination determines the man's fitness for further military service, irrespective of the offense with which he is charged, and reveals a higher percentage of unfit than is usually found elsewhere in the army. The second part of the examination is very comprehensive and is designed to classify accurately the individual according to accepted standards as regards mentality and to ascertain, in all its essential phases, the family history, personal history, military and civil record of the individual. It may be remarked that all facts revealed by the man under examination are treated as confidential, and are made use of only in the determination of what action is to be taken in his case subsequent to trial. The information derived from this examination is checked up by correspondence with former employers, members of the family, police authorities, various charitable associations, etc., so that a very complete record of the

man's past can be obtained upon which to base a fair prognosis of his future.

As a result of the above examination a varying percentage of the individuals examined are found to be definitely unfitted for military service (about 13% in the first 500 cases in this jurisdiction) and steps are immediately taken for discharge, or, as in the case of insanity, transfer to another institution.

When the examination by Major King does not definitely determine unfitness for service, the man is turned over to the casual officer as awaiting trial, or in case of a man already tried, is dressed in. If of the former class, and if his charges have already been received, he is furnished a copy and his counsel consults with him as to how he wishes to plead. The medical examiner is an associate counsel for the accused and information in his hands, as well as testimony by him, can be, and frequently is, made use of by the defense. If the charges have not been received a telegraphic summary of the man's offenses is requested by wire from his company commander and the charges are preferred by one of the Commandant's staff officers.

Should the accused wish to plead guilty, his case is immediately referred to one of the trial judge advocates and the man is brought to trial the same day or the following day. In case he does not wish to plead guilty and the witnesses cannot appear in person, the trial judge advocate immediately draws up interrogatories for the prosecution and these with the cross interrogatories and, if necessary, separate interrogatories for the defense are mailed at once, and upon their return the trial takes place and the case is disposed of.

Two courts-martial, each consisting of five or six members with a trial judge advocate, an assistant trial judge advocate, and a counsel, are in daily session and dispose of from three or four to as high as fifteen cases per day. Each case is tried on its merits, and in a large percentage of cases the bulk of the evidence is in the form of depositions; this in itself is unsatisfactory, because in many instance the facts brought out by the evidence presented are not such as to enable the courts to act with intelligence and a second set of interrogatories must be sent out. Owing to the numerous movements of troops in the last six months these interrogatories must be sent to widely separated points and in individual cases the difficulty in getting in touch with a material witness has been a fruitful source of delay. However, in spite of these unusual and unfavorable conditions, the average time in confinement at this station before promulgation of the sentence was, for the first 400 cases handled, only 24.9 days and for subsequent

cases has been materially reduced. This period includes the medical examination, preparation for trial, trial, action by the reviewing authority and preparation and promulgation of the order in the case. In view of the serious nature of the offenses charged, the average time in confinement is probably much less than in a similar number of cases for similar offenses tried before any criminal court in civil life.

Of the 400 cases considered, only 349 actually went to trial; 51 cases were disposed of without trial, in these the accused was either discharged as unfit, transferred as insane, or released on account of the Statute of Limitations running for the particular offense charged, etc. In these 349 cases there were 3 total acquittals and 346 convictions in whole or in part. In all there were 491 offenses charged, the greatest number being for desertion, 340. Other serious offenses were as follows:

Escape	27	Burglary	1
Larceny	20	Forgery	6
Embezzlement	14	Disobedience of orders.....	3
Sleeping on post.....	3	Threats to kill.....	1
Quitting guard	3	Allowing prisoner to escape..	1
Absence without leave.....	4	Assault	5
Losing clothing	6	Drunk and disorderly.....	8
Losing equipment	34	Misuse of government prop-	
Breach of arrest	8	erty	4
Fraudulent enlistment	2		

Of the 491 offenses alleged, the trial resulted in 365 convictions and 126 acquittals, and it might be noted that in 51 cases men charged with desertion were found guilty only of absence without leave; the courts in awarding punishment adjudged dishonorable discharge in 281 cases in addition to varying terms of confinement, which, for the 349 cases considered, totalled 522 years and 4 months.

When the trial in any particular case is completed, the record is forwarded to the reviewing authority, the Commandant, who turns it over to his legal adviser, the Judge Advocate of the Disciplinary Barracks, for review and recommendation. The review of the Judge Advocate covers all the legal questions raised, sufficiency of proof, admissibility of evidence and compliance with statutory requirements, etc.

While the man has been awaiting trial the Medical Examiner has completed his verification of the examination of the accused and has forwarded his recommendations to the Judge Advocate. This recommendation embodies the views of the Medical Examiner as to the pos-

sibilities of the man for future service, or in case unusual or extenuating circumstances have become known, they are cited for the benefit of the reviewing authority, and briefly indicates the Medical Examiner's idea as to the amount of punishment. If the Medical Examiner considers the man a good risk for restoration to the colors, he recommends suspension of dishonorable discharge in case one be adjudged, or in certain cases, if the man be unsuited for further service, and if discipline will not suffer thereby, he may recommend that any confinement awarded be remitted, this latter action being frequently taken in the case of married national guardsmen whose records indicated that they had properly supported their families before being called into the federal service. But whatever the recommendation of the Medical Examiner may be, the Judge Advocate considers the case on its merits and then places the record before the reviewing authority with his recommendation and that of the Medical Examiner. The ideas of the Medical Examiner and the Judge Advocate usually coincide, but when they do not, the reviewing authority takes such action as the circumstances warrant; the finding of the court may be approved and then certain remissions, mitigations or suspensions be made, or the finding and sentence may be disapproved in whole or in part. The reviewing authority is guided by a desire to save as many good men to the service as possible and to see that, in so far as possible, equal punishment be given for similar offenses. It may be mentioned that of the 349 cases mentioned above, the reviewing authority suspended the execution of dishonorable discharge until the soldier's release from confinement in 134 cases, and of the 522 years and 4 months confinement awarded by the courts, the same authority remitted 103 years and 5 months. This suspension of the portion of the sentence that involves dishonorable discharge until the soldier's release from confinement is intended to give the man a certain period of time in which by positive action he can evidence his reformation and be restored to the service without the stigma of a dishonorable discharge appearing upon his record.

The following cases may serve to illustrate the action taken by the reviewing authority and the reasons therefor, upon certain classes of cases that not infrequently come before him:

Case I—John Smith was the son of average parents in a large city; his mother spoiled him; he enlisted fraudulently, and, after serving on the border until the glamor of a soldier's life wore off, he became home-sick, deserted, was apprehended, sent to the Disciplinary Barracks, tried and convicted. Investigation showed that he was

actually only 16 years of age, that he had been arrested for joy riding, had not attended school regularly, and was mentally rather undeveloped, but not bad. Correspondence with the parents indicated that they had awakened to a realization of the necessity for action, and that they were anxious to do what they could for their son. It appeared that confinement in the Disciplinary Barracks could do little or no good for one so young, but that home influence and supervision might make a useful citizen out of the boy. The confinement in consequence was remitted.

Case II—John Jones was a farmer, married, with a couple of children, and a member of the local militia company. When the call of June 18, 1916, came, he responded and was sent to Texas. For some unknown reason he was not discharged, notwithstanding that he had dependent relatives. His wife fell ill, John Jones deserted, returned home, and looked after her. He was apprehended, tried, and convicted. Investigation showed that he had always taken good care of his family, that he was not particularly well suited for military service, and that if confined his family would be a charge upon the community. The confinement was remitted.

Case III—John Brown came from the slums in a large city; he enlisted, deserted, was tried and due to a fault in the prosecution was convicted of absence without leave only. Investigation developed the fact that the man was a drug user, had had a long police record and was a menace to any organization in which he might be serving. Upon completion of his term of confinement a board of officers found him unfit for service under Paragraph 148½ Army Regulations, and he was discharged.

Case IV—John Green served one enlistment and was discharged with a character "Excellent." After a year on his second enlistment he went to town one night, got drunk, and disappeared. After an absence of six months he surrendered, pleaded guilty to desertion, and was sentenced to dishonorable discharge and confinement for two years. It appeared that the man had an honest desire to redeem himself, his confinement was cut to one year, the dishonorable discharge suspended, and the man put in the disciplinary battalion at once, and there appears to be every probability that he will make good.

So much for the means of getting the man "behind the walls," the greater problem is the one that faces the authorities of all penal institutions, that is, getting the man out again in such a condition that he will be a better citizen or, in this particular case, a better soldier, actual or potential, than before the commission of his offense. As

yet, in the army, as in nearly every other place, delinquents are classified in accordance with the offenses they have committed. In time doubtless, the type of delinquent rather than his offense will be considered and men will be handled as individuals rather than as representatives of a given class of delinquents.

It is the present policy of the War Department to hold eligible for restoration to the colors any man who has been dishonorably discharged for any offense not involving moral turpitude. All men of this class at the Disciplinary Barracks are given a chance to go into the Disciplinary Battalion where they are given an intensive course of military training. The procedure is roughly as follows:

A man is tried for desertion and convicted, his psychiatric examination has shown him to be of average mentality and that, as far as can be determined, there are no serious blots on his past. He says he desires restoration. The reviewing authority possibly has suspended his dishonorable discharge and ordered him to the Disciplinary Battalion at once. If the man works and makes good, at the end of four (4) months, a board of officers, three in number, convene and consider his case. If, upon recommendation of the board, the man is restored, he remains three (3) months more at the Barracks as a member of the restored detachment (this three months being a sort of probationary period in which the man is given an advanced course of military instruction), after which the man is transferred to some line organization. The excellence of the system of training followed in the Disciplinary Battalion is attested by the fact that over 80% of the men restored make good, many of them later being discharged as non-commissioned officers with a character "Excellent."

The men who are not eligible for restoration are given, in all cases where they so desire, a course of vocational training, either in agriculture or in one of the mechanic arts, as they may choose, in order to fit them to be self-supporting in some useful field upon discharge. The more ambitious are given instructions at night in ordinary grade school subjects as well as in telegraphy, short-hand, type-writing, etc. Those who express no choice in training are given one of the courses for which they appear suited. The Disciplinary Barracks runs a farm colony in which various phases of chicken and hog raising, fruit and vegetable growing are taught. It is hoped that in the near future this will be further extended by the addition of a

dairy herd and one or more units of farming under glass. In the various shops, men are taught tailoring, boot and harness making, tin-smithing, blacksmithing, carpentry, and to a limited extent mechanical and electrical engineering. Last but not least, the parole officer maintains an employment bureau through which any man who so desires can obtain a position in any line in which he has qualified at the barracks. For some reason there seem to be more jobs than men, so no man need leave the place without good prospects unless he so wills.

The latter paragraphs perhaps pertain more to penology than to the administration of justice, but as the two should go hand in hand, this phase of Disciplinary Barracks life has been touched upon to show the opportunities accorded the inmates as well as the efforts of the authorities to save and to return either to civil or military life the highest possible percentage of self-supporting law-abiding citizens

A COMPARATIVE STUDY OF FEEBLE-MINDEDNESS AMONG OFFENDERS IN COURT.

V. V. ANDERSON¹

In a former paper attention was called to three distinct types of mentality found amongst border-line mental cases in court. The Defective Mentality, the Psychopathic Mentality, and the Delinquent Mentality as such.

To be sure, there is often an over-lapping in the same individual, but for purposes of practical classification we may regard these three types of mentality as definite entities. Certainly they seem to present very marked individual differences, and create—because of essential constitutional dissimilarities—social problems that require entirely different angles of approach in dealing with them.

The present paper undertakes a comparative study of two of these types:

The Feeble-minded and the Psychopaths. For the purpose of this study two hundred cases were selected, one hundred from each group. The object of this study was to find out whether the apparent differences existing between these two types of individuals were sufficiently marked to make a separate classification practical.

The cases were taken from the files alphabetically and represented the first one hundred of each group whose clinical histories contained sufficient data to warrant inclusion for study.

As a matter of course, the earliest noticeable deviations were in childhood. Their ability to profit by school instruction sharply divided our two hundred cases into two well-defined groups. On the one hand we find individuals perfectly capable of profiting by school instruction, advancing from year to year, and, in the majority of instances, graduating from grammar school—many doing well in high school, some graduating and going on to college.

On the other hand we find a group of individuals, none of whom were able to graduate from grammar school, all of whom evinced an apparent incapacity for profiting by ordinary school instruction, could not measure up to the standards of normal mental development, as required by the public school curriculum, and, in general, were regarded as mental failures. The following table indicates the grade reached upon leaving school.

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TABLE I.
SHOWING THE SCHOOL GRADE REACHED BY 100 FEEBLE-MINDED AND
100 PSYCHOPATHS RESPECTIVELY.

		<i>Feeble- minded.</i>	<i>Psycho- paths.</i>
<i>Grammar Grades</i>	Primary	4%	0
	1st Grade.....	11%	0
	2nd "	4%	0
	3rd "	12%	1%
	4th "	14%	0
	5th "	23%	2%
	6th "	11%	2%
	7th "	9%	4%
	8th "	7%	7%
	9th "	00	9%
		0	38% Graduated. No other schooling.
<i>High School</i>	1st year	0	4%
	2nd "	0	8%
	3rd "	0	1%
			6% Graduated. No other schooling.
<i>College</i>	Freshman year..	0	1%
	Sophomore year.	0	1%
	Junior year.....	0	1%
	Data not obtained	3%	13%
	No schooling....	2%	2%

The feeble-minded are more frequent at the lower end of the scale, while the psychopaths are found at the upper end. A majority of the feeble-minded—68%—never got further than the fifth grade in school, while 82% of the psychopaths got above the fifth grade. 60% of the psychopaths graduated from grammar school. 22% of the psychopaths went to high school, 9% graduated from high school, and 3% went to college. Not a single feeble-minded individual was ever able to finish grammar school.

This difference in behavior, at the very beginning of their training for life, constitutes the first link in the chain of evidence for differential diagnosis between these two types. One group very early in the race becomes disqualified and drops out. The other group goes on to a more extensive accomplishment of academic requirement.

In due course of time, our individuals reach that stage of their careers where the sterner problems of self-support are to be reckoned with. Just what individual differences their behavior here exhibited the following table will indicate:

TABLE II.
SHOWING THE RELATIVE INDUSTRIAL EFFICIENCY OF 100 FEEBLE-MINDED AND
100 PSYCHOPATHS.

	<i>Regularly employed.</i>	<i>Irregularly employed.</i>	<i>Odd jobs.</i>	<i>Work at home (Women).</i>	<i>Do not work at all.</i>
Feeble-minded	4%	21%	28%	13%	34%
Psychopaths	28%	41%	4%	17%	10%

Seven times as many psychopaths are steadily employed as feeble-minded. While the feeble-minded in a majority of instances (62%)

are either unemployable or simply do odd jobs, the psychopaths in 69% of cases were either steadily or irregularly employed and self-supporting.

The feeble-minded as a class are in the majority of these cases industrially inefficient and not capable of "holding down" positions for any length of time; while the psychopaths as a class are in the majority of cases fairly efficient, industrially capable of holding positions for much longer periods, and, when they lose them, do so more because of their temperamental peculiarities, their emotional instability, etc., than because of any real lack of industrial efficiency.

From these two types are drawn a large percentage of repeated offenders. The following table indicates the comparative frequency with which they appear in court:

TABLE III.
SHOWING THE RELATIVE FREQUENCY OF ARRESTS AMONG 100 FEEBLE-MINDED AND 100 PSYCHOPATHS.

	<i>Total Number of Arrests.</i>	<i>Average Each.</i>
Feeble-minded	1,825	18.25
Psychopaths	369	3.69

It appears from the above that the feeble-minded are arrested almost five times as frequently as the psychopaths. This surely does not mean that the feeble-minded are five times as wicked or as delinquent as the psychopaths. It very probably refers to the fact that being more stupid they are more easily caught. Likewise, being economically more unstable, they drift aimlessly, falling into the hands of the court for various minor offenses which the psychopaths, because of their greater intelligence and economic efficiency, are able to avoid. Whatever be the explanation, I present the objective facts for what they are worth.

I shall review two main efforts at treatment tried by the court: Probation and Penal Treatment.

TABLE IV.
SHOWING THE REACTION OF 100 FEEBLE-MINDED AND 100 PSYCHOPATHS
RESPECTIVELY TO PROBATIONARY TREATMENT.

	<i>Feeble- minded.</i>	<i>Psycho- paths.</i>
Number of times placed on probation.....	432	161
	<i>F.M. Psycho.</i>	
Number of times surrendered.....	220	50
Number of times inside probation.....	118	18
Number of times defaulted.....	14	
Number of unsuccessful probation periods.....	338	82
Number of successful probation periods.....	94	79
Percentage of successful probation.....	21%	49%

Seventy-nine per cent of the probation periods of the feeble-minded were unsuccessful, while 51% of the probation periods of the psychopaths were unsuccessful. 21% of the probation periods of the feeble-minded were successful, while more than twice that number (49%) of the probation periods of the psychopaths were successful. The chances are better than two to one in favor of the psychopaths, and this without any special efforts directed toward training them to counteract those difficulties of personality most responsible for their failure. It is quite likely that more can be done for the psychopaths through probation than through any other agency, provided their treatment be guided by a knowledge of their temperamental peculiarities, their mal-adjustments of personality, so that their environment can be suitably influenced or chosen for them and they themselves trained to inhibit their impulses.

The feeble-minded are less promising. They suffer from a fundamental defect in their intelligence that renders them incapable of profiting properly by experience and prevents them from measuring up to the accustomed standards of conduct. Only a small percentage—in these cases not more than 25%—could be considered satisfactory probation cases. The larger proportion of the feeble-minded need more or less permanent supervision.

The court tried also Penal Treatment, as the following table will show:

TABLE V.
SHOWING THE DISTRIBUTION OF PENAL TREATMENT AMONG 100 FEEBLE-MINDED
AND 100 PSYCHOPATHS RESPECTIVELY.

	<i>Number of sentences.</i>	<i>Average each.</i>	<i>Length of time sentenced.</i>	<i>Number of indeterminate sentences.</i>
Feeble-minded	735	7.35	106 years	250
Psychopaths	71	.71	12 years	14

Forty per cent of the arrests in case of the feeble-minded resulted in a sentence, while only 19% of the arrests in case of the psychopaths resulted in a sentence. Likewise, the length of time sentenced is proportionately much longer for the feeble-minded, though the type of offenses committed remain much the same. A recognition on the part of the judge of a difference in the character of treatment needed for these two types is apparent, though the real explanation may be found in the length of their records and recommendations of the probation officer.

Finally we come to the mentality of these two types. It stands

as the most important, the most fundamental factor underlying all the foregoing facts.

TABLE VI.
SHOWING THE RELATIVE MENTAL LEVEL OF 100 FEEBLE-MINDED AND
100 PSYCHOPATHS RESPECTIVELY.

	7-8 yrs.	8-9 yrs.	9-10 yrs.	10-11 yrs.	11-12 yrs.	Sub- normal.	Adult.
Feeble-minded.....	4	30	41	25	0	0	0
Psychopaths.....	0	0	0	1	3	12	84

Here again the feeble-minded are at the lower end of the scale, while the psychopaths are at the upper end. 75% of the feeble-minded had a mental level below ten years; none of the psychopaths had so low a level of intelligence. 25% of the feeble-minded were between ten and eleven years; only one per cent of the psychopaths had such a low level. None of the feeble-minded were above the eleven year level; 99% of the psychopaths were above this level.

The fact is that a great majority of the psychopaths (84%) had a perfectly normal intelligence, while all of the feeble-minded suffered from an arrest of mental development prior to reaching adolescence; an obvious defect in their general intelligence, a dwarfing of their mental powers, that prevented them from ever reaching the adult status of mentality. (To be sure some of the feeble-minded possess markedly psychopathic traits. They still, however, come under the classification of feeble-minded.)

We must think of the psychopaths in an entirely different light. We must consider these individuals in the light of adjustment of their personality, rather than in terms of general intelligence, and realize that their anti-social conduct is due less to their stupidity, less to their lack of understanding the demands of a normal social organization, and inability to foresee the consequences of their acts, than it is to a lack of ability to inhibit impulses, to assume responsibilities, to face difficult situations, to resist discouragements, and to co-ordinate properly a poorly balanced nervous mechanism. Their mentality is not defective in the usual meaning of the term, but is unstable, impulsive, vehement, in some cases erratic.

They are very emotional, easily upset, they lack inhibitions they undertake many obligations, but never fulfill any; they are restless, at times show great motor activity, become easily fatigued, and occasionally, they are violent and apparently insane under the influence of alcohol, drugs, or excitement. While under detention they clear up and give no evidence of a psychosis or mental defect, only to have another outbreak when things go wrong in their environment. In

institutions they give more trouble than any other group, and seem little modified by such treatment. At times they become absolutely unmanageable and because of the fact that they seem so erratic and uncontrollable, they are often considered insane, and are transferred to insane hospitals.

The fact is, these individuals are better handled outside, except in cases where vicious and markedly delinquent traits render their incarceration necessary. They react to discipline very poorly—one may say violently—but much progress can be made in training them, through an intelligent effort to understand their motives and to secure their own co-operation to the extent of undertaking to study their weaknesses and to develop their inhibitions. In other words, under proper care they can develop sufficient self-control to counteract their impulsive tendencies.

SUMMARY.

In this study a comparison has been made of feeble-mindedness and psychopathic personality under six main headings: Grade reached in school, industrial efficiency, number of arrests, reaction to probation, response to penal treatment, and mental level. It has appeared that there are marked differences in the way these two types react. The deviations are such as to justify their consideration under separate categories for practical court work.

The feeble-minded group have not been able to make the required progress in school. They were incompetent, impotent, and they dropped out, unable to finish grammar school. The psychopaths were able to make better progress. In the majority of cases they finished grammar school, many went on to high school, and some graduated and went on to college.

Comparing them on the basis of industrial efficiency, it was found that seven times as many psychopaths as feeble-minded were steadily employed. The majority of the feeble-minded were not self-supporting, while the majority of the psychopaths were.

The feeble-minded were arrested about five times as frequently as the psychopaths, but such facts should not be construed as indicating the comparative criminality of the two types. It can be interpreted only as indicating that the machinery of the court was employed more frequently for this group.

On probation the psychopath is twice as good a risk as the feeble-minded. It was thought that in general terms more could be done for the psychopaths through probation than through any other method, provided an effort be made to guide his treatment by knowledge of

his peculiar personality. The attitude of the court was in favor of this mode of treatment. The feeble-minded received twice as many sentences as the psychopath in proportion to number of arrests.

The most important feature of the entire chain of data is found in the table of mental level. None of the feeble-minded had a mental level above eleven years. All of the psychopaths—with one exception—possessed a level of intelligence above eleven years. The feeble-minded are found around the lower end of the scale of intelligence, while the psychopaths are around the upper end. We are to think of the feeble-minded in terms of development of general intelligence. A halt in development occurs prior to their reaching adolescence. We think of the psychopaths on the other hand, in terms of adjustment of their peculiar personality. Their intelligence itself is not at fault. They are unstable, impulsive, emotional, and poorly balanced. Contrasted with the normal individual, whose mental powers are correlated and well balanced, the mental machinery of the psychopath is discordant and poorly balanced.

In the light of the foregoing facts, it seems safe to conclude that any form of treatment that does not take into consideration the essential differences in mental makeup that exists between these two types must eventually fail to attain its object.

THE CO-OPERATION OF A LIBRARY STAFF WITH THE CRIMINAL INVESTIGATOR¹

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It might easily be claimed that in no other field than criminology and other applications of the law is the co-operation of a library staff with the investigator so necessary, because on the one hand there are no heroes in crime, while on the other, paradoxically, every criminal in a "going condition" is a specialist. Accordingly, those applications of law which have to do with the regulation of crime include every idea which the vast majority of the orderly have found necessary for the regulation of the unruly. They therefore cover, or seek to cover, every possible tangent to the normal and in consequence the investigator of crime and the co-operating librarian must scan for their material the widest possible range of human impulses and activities.

The questions immediately arise: "Are not these matters for a public library or a special library other than a law library?" Is not the law library essentially an archive of post-mortem considerations of the individual and post-facto considerations of his divergencies?" "Do librarians in different fields have similar or unequal opportunities for co-operation with the investigator in developing the position of the library as a factor in individual and public affairs?" To these questions, as far as the law librarian is concerned, the answer must be based upon the elasticity of his ideas of precedent. If he takes heed that the library in every field has evolved from an archive into an educational institution; that the aim of study and research is to prevent ills as well as cure them, or to increase man's wealth as well as tax him, he will find opportunities for co-operation in individual, municipal and legislative progress that by reason of his association with the law as a regulatory consensus of opinion will affect a wider number of individuals than can be reached indirectly by most other librarians.

This will be more possible if the law librarian cleaves to the idea with De Toqueville (*Democracy in America*), that the lawyer is the natural aristocrat under American conditions because of the range of information concerning history, jurisprudence, philosophy and other matters of culture which is associated with the study and interpretation of the law. Even if De Toqueville's observation may be chal-

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lenged by other men of letters and science under our modern American conditions, the law librarian must concede that the lawyer will have difficulty in maintaining a favorable position among these men unless his special library keeps apace with that co-operation and material which will sustain him.

It is not proposed, however, to drift into an abstract discussion of cultural or educational values. This memorandum is intended for the more utilitarian purpose of defining a measure of co-operation of a library staff in the professional progress of an individual, for whatever value it may have in suggesting extension of it to other individuals. The point is that it is hardly likely that the worker who needs the co-operation of a library staff will discover it by himself. I did not. The need leading to my discovery of it was almost identical with that of the New York magazine editor who wrote last month to one of my colleagues in the School for Police Officers of Berkeley, California, for the name of the publisher of a German book on scientific criminal investigation. My colleague in turn wrote to me, and I sent the information to New York from my Western outpost; information that might most easily have been obtained without delay of three weeks, by telephoning to the librarian or purchasing division of his nearest library. I likewise had heard of a book. It was one that discussed the handwriting the Junius letters and by means of it established their authorship. The book was not in my local library. I searched neighboring libraries after the usual manner of a borrower, all in vain. A chance engagement took me to San Francisco and I expectantly hustled to the great library of the University of California, only to learn that the book I was after was not on their shelves, and, in fact, had been out of print for forty years. I returned home, nursing a grouch against my fancied isolation, and in this frame of mind, for the first time and quite by accident, spoke to the librarian of my home library (Mr. F. F. Hopper, now of the New York City Library) about my half-year of independent search. I don't know just what he did, but within sixty days I was the proud possessor of an uncut copy, which I was informed had been unearthed for me in England by a simple routine procedure of advertising.

It was my first experience of co-operation, and let me point out that it was the librarian who assumed the initiative in placing the resource at my disposal. Therefore, to promote the discovery that you librarians can co-operate you must do something to overcome the borrower's lack of knowledge of your resourcefulness; something to overcome his distrust that you know nothing about his particular interests; and something to lead him to discover the idea that your

knowledge of bibliographical research is the co-operative tool which you have to offer. This must come from you as affording the simplest means by which the worker can become familiar with the idea. An ingenious student, to be sure, will find other and probably more complex ways of discovering it and however complex his method may be, it will be valuable to him so long as it is his own discovery. He must, however, beware of irritating other men by trying to teach them through his complex discoveries.

Professional progress includes as an essential proposition that the worker become familiar with his professional literature. Like many other propositions, this includes a sense of friction and where there is friction a lubricant of some type is indicated. In chemistry we have a special type of lubricant which has marvelous co-operative powers. We call it a catalytic agent or more simply, a catalyser. A very small quantity of a catalytic agent introduced into a chemical re-action will change a very large quantity of substances from one form to another, lubricate the course of the reaction tremendously and be recoverable at the end of the reaction undiminished, unchanged, and unfatigued in any way. A few pennyweights of platinum precipitated in a finely divided condition through a porous mat through which the gases of burning sulphur are forced, will convert tons and tons of the gases into sulphuric acid and yet outlast the patent rights of the process. Just such an agent can the library become in any case of individual or community progress and just such an agent have I found it to be in my own relations with its staff.

I believe the opening wedge in any co-operation that you have to offer consists in teaching the library user how to use the resources of the library in getting hold of literature which does not appear to be immediately available by reason of absence from the shelves. This is of particular interest to the law librarian because of a characteristic difference between a law library and a general or public library. A man usually goes into a law library and says, "Have you so and so on this or that?" And the matter usually ends as far as the co-operation is concerned with "Yes," or "No," on the part of the librarian. When the same man goes to the public library he asks, "What have you on this or that?" And the way is paved for an immediate co-operation in displaying everything available whether in sight on the shelves or not. In this co-operative way the reference librarian of the Multnomah Public Library of Portland, Oregon (Mrs. E. R. Rockwood), recently gave me a specially prepared list of everything in that library on criminology, and about the same time, one of the members

of the reference staff of the Tacoma Public Library (Miss S. Lindsay, public documents division), gave me a list of everything in the library in public documents on identification, the latter including a dozen or more much needed articles that I had not found alone in spite of my familiarity with this library.

This first step in co-operation taken, the second step, that of the proffer of instruction in the use of the various catalogs, descriptive bibliographies, and similar material available in the library, follows. I can safely say that the average library user looks upon the card index as the only catalog available and unless the library staff meets him part way he is very likely to learn nothing of the many book lists of different kinds which may be on the shelves and which are fundamental to his further progress in search of material pertaining to his problem which is not immediately available on the shelves. At my public library, through the co-operation of the present librarian (Mr. John B. Kaiser), I have repeatedly made use of such help in solving problems. A heated controversy, that I recall, concerned the origin of an explosion. The filing of legal proceedings depended ultimately upon the interpretation of the controlling conditions by fire insurance people generally, and by search among the descriptive memoranda published in library and government publications concerning special libraries and their collections, we ran down a pamphlet on "What Is a Fire Loss," in a distant special library and which gave me my answer. As in this case there not infrequently arises the necessity for going outside of the library for the particular book or pamphlet desired and here co-operative instruction in the use of the various cumulative indexes collected by libraries becomes available.

In my own case in seeking out the applications of the resources of the chemical and physical laboratory, in the solution of criminal problems, I consider my greatest single step up to this time, the arrival at an understanding and use of inter-library borrowing facilities through the kindly co-operation and instruction of the staff of my local public library. Where a few years ago I felt that I was restricted in my professional equipment to an unreasonable degree by the somewhat limited library facilities in the Pacific Northwest, I now know by trial that the major libraries of the entire United States are as freely available to me as if I were a resident within their jurisdiction. Let us take, for instance, my need for some information on the development of the applications of photography in court, to the exposition of determinative facts as to disputed handwriting. I was anticipating some cross-examination along these lines and had a blind reference

to "R. W. Piper: The Laws of Evidence and Scientific Investigation of Handwriting, American Law Register, May, 18/9." Here was something clearly not on the shelf of my public library, but it was speedily found and borrowed from a neighboring law library. You can readily see that this is especially helpful co-operation, because a letter seeking to borrow a book has a greater credit value when written on the letterhead and by a public or law library than when written on the letterhead of an individual. Besides, the book wanted is described in technical terms and the recipient of the letter is not called upon to puzzle out that "The Red Ship" was the borrower's idea of "Rubaiyat."

The medium of communication between the library and the individual in matters of co-operation is the reference librarian, and here I can say to my colleagues, that the open sesame of using it is to tell the reference staff one's troubles. I have learned that you librarians are like other professional men and it is something which I would urge you to advertise a bit, that those questions which arise as a part of one's profession, however personal they may be to the inquirer, invariably arouse no personal interest in the reference librarian and pass out of his mind as soon as answered as a purely professional incident.

This is a matter of developed confidence which has had a profound effect in the solution of my own professional problems and which can be duplicated in the professional practice of anyone whom you will encourage to solve the few requirements that establish responsibility and a personal relation with at least one library. My questions and the reference librarian's contributions to their solution have come to run the gamut of my interests, always with result because of the powerful bibliographical tools with which the librarian works. My use of the library seems to run along three fairly well defined lines. The first and most frequent use is to refresh myself on information already acquired at some other place or time in my professional development and required for some problem in hand, arising in the ordinary course of business. The second use is seeking information or suggestions on ideas or problems entirely different in whole or in part from any previous experience. The third is recreation. In each of these the effective result has been increased by the encouragement on the part of the reference staff of a statement from me of my needs.

How important a co-operative attitude on the part of the reference staff is, will become apparent to both law librarian and library user as soon as it is fully appreciated that progress in criminology,

law, or any other subject of today is no longer a matter of chance, but is completely bounded and described in terms of the law of permutation and combination. The value of the library either to its individual users or the community is, therefore, directly proportionate to the skill with which the co-operation of the librarian is presented.

From this point of view the library appears as firm ground into which to dig one's heels in screw-pressing a professional or commercial development out of an utilitarian environment and I have already pointed out that the active co-operation of its staff in presenting its resources gives them all the power of a true catalyser. Under present conditions, without the benefit of the inter-library loan system, advanced thought in applied criminology away from the great library centers would be practically impossible. It seems to me, therefore, that the law library at large should be more than a collection of decisions. The law and its associated subjects such as criminology, in which I am interested, in its broad sense is the study of the work and thought of other men, past and contemporary, in order to be able by reason of conclusions that may be drawn from it to determine how to do the work of today and solve the problems of tomorrow. It seems to me that the law librarian should aim to develop the co-operative functions of his library to as great an extent as is being done in the public and special libraries in matters of business and general economics and to develop his collection of books and information to include, in addition to the theories of the law, the material dealing with the conduct and ambitions of people both as individuals and nations. The law library would then take its place as a true catalytic agent in the organization of progressive thought for the orderly and the accumulation of helpful co-operative material in the control of the disorderly.

CORRESPONDENCE.

PEOPLE V. JUREK.

Aurora, Illinois, July 13th, 1917.

Messrs. Chester G. Vernier, Elmer A. Wilcox and William G. Hale.

Dear Sirs:

I have read some of your comments upon Judicial Decisions on Criminal Law Procedure, with interest.

The comment which challenged my attention and has provoked my writer's rheumatism, is the one upon the setting aside of the verdict in *People v. Jurek*, 115 N. E. 644, an Illinois case.

The comment is: "The absurdity of the law which makes the juries judges of the law as well as the fact has been often commented upon. That it is absurd is fully conceded, except by those who desire additional loopholes for securing the acquittal of those, in fact, guilty of crime. The above decision furnishes an additional reason for changing the law."

The law is the rule of action, commanding the people, who are not lawyers, to do certain things, and commanding the same people not to do certain things; and ignorance of the law does not excuse the actor. This idea originated in a monarchy, and it is very strange that it should not obtain in a republican form of government.

The law is supposed to be enacted for the people rather than for the lawyers. If the law is such that the people can not understand, then it is up to some one to explain it to them.

We know that some lawyers do not understand it, and that the supreme courts cannot explain it so that some of the lawyers can comprehend it. We know that some people have brains—who are not lawyers, and who occupy more places on the assessment roll than the lawyers.

Furthermore, with us, it is a government by the people for the people, and why should the people be denied their representation in court, where the law is executed? They can not and do not make more mistakes than the legislatures do in enacting a law, nor the trial court in trying a case in law.

The fundamental proposition in the enforcement of the law by trial is, that the offender shall be tried by his peers. That is, if the offender can not understand the law, then he shall have a trial by his peers, who do not know any more about the law than himself. It is up to the lawyers to explain the law in the light of the evidence, and the law and the lawyers do not make the evidence.

I submit that if the lawyers can not make an unintelligent law plain to a jury, that the offender should be excused, because his crime is a less offense than a law which can not be explained.

It is true that many verdicts are contrary to the written law, and contrary to the intelligence of some people, but if the wisdom of the past were sufficient, then there would be no use for a legislature to repeal an act in the last new moon, and before sun-up the next day. Every offender repeals the law in his own case.

Personally, I have never represented a defendant. I have helped to prosecute some. The fact is that we must offset imperfections with imperfections.

Very truly yours,

(Signed) CHAS. A. LOVE.

REPLY.

The foregoing criticism of my comment upon the recent case of *People v. Jurek*, is so lacking in coherent development and so extreme in character as to carry with it its own refutation in the mind of the average reader; and, hence, is in and of itself scarcely entitled to a reply. In view, however, of the brevity of my original note, I am led to take this opportunity of elaborating slightly upon it. The critic must admit, of course, that he can find scant support for his views among the standard authorities, and that insofar as the rule for which he contends is followed at all by the courts, it is anomalous and arbitrarily limited to criminal cases. "The doctrine has obtained," says Mr. Wigmore, "in a few jurisdictions that the jury in dealing with the *local law* applicable to the case, have a legal right to repudiate the instructions of the judge and to determine the law for themselves; but this ill-advised doctrine, defiant of the fundamentals of law, has only a narrow acceptance." [Wigmore, on Evidence, § 2559.]

And in Thompson on Trials [§ 2134], the following vigorous statement is found: "The evil consequences which flow from educating juries in the idea that they are judges of the law in a sense which places their judgment above that of the court, and which makes decisions of the court mere incidental aids or helps to them in making up their judgment upon the law, must be apparent upon the slightest reflection. It was well said, in an early and leading case in Kentucky: 'If the court had no right to decide the law error, confusion, uncertainty, and licentiousness would characterize the criminal trials, and the safety of the accused might be as much endangered as the stability of public justice would certainly be.'" The same author quotes Mr.

Justice Story, as follows: "If the jury were at liberty to settle the law for themselves, the effect would be, not only that the law itself would be most uncertain, from the different views which juries might take of it, but, in case of error, there would be no remedy or redress for the injured party; for the court would not have any right to review the law as it had been settled by the jury. Indeed, it would be almost impracticable to ascertain what the law, as settled by the jury, actually was. On the contrary, if the court should err in laying down the law to the jury, there is an adequate remedy for the injured party by a motion for a new trial or a writ of error, as the nature of the jurisdiction of the particular court may require. Every person accused, as a criminal, has a right to be tried according to the law of the land—the fixed law of the land—and not by the law as a jury may understand it, or choose, from wantonness or ignorance or accidental mistake to interpret it." [*U. S. v. Battiste*, 2 Summ. (U. S.) 240, 243.]

A system, therefore, which leaves the determination of the law of the case to those who are trained to that end, i. e., the judges, not only tends to the establishment and maintenance of a uniform, determinable and methodical body of law, but even accomplishes in the largest practicable measure that which the critic himself apparently desires, viz., the protection of the accused from wrongful punishment. Under the procedure which history has established, and the wisdom of experience has justified, the rights of both society and the one charged with crime are surrounded with every reasonable safeguard. The people are not, as our critic would have us believe, without representation in the courts. The judges, as well as jurors, are most emphatically the representatives of the people. The innocent man has no better friend than the upright judge clothed with a fair measure of authority, and society no more effective champion of law enforcement. What more can we ask?

Moreover, a system of jurisprudence which makes juries the judges of the law must lead inevitably, if logical, to a jury-enacted law for the specific controversy. This in turn means no established rule for the guidance of human conduct; hence, no law in the accepted sense. Under such a system the judicial office may well be abolished.

WILLIAM G. HALE.

College of Law, University of Illinois.

JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE

CHESTER G. VERNIER, E. A. WILCOX AND WILLIAM G. HALE

FROM CHESTER G. VERNIER

ATTEMPTS.

State v. Rains, Mont. 164 Pac. 540. *Attempt to murder.* Facts sufficient to constitute the crime of attempt to murder are not stated by an information charging that defendant attempted to murder R., and towards the commission of the crime started to walk to her home, and, meeting her on the highway, stopped her and struck her in the face, and compelled her to return to her home, and forced her to enter it and locked her in, he being possessed of a loaded revolver and loaded rifle and bottle of laudanum, by the use of all of which he, having the intent to murder her, did then and there attempt to do so, and that he failed and was prevented in the execution thereof by the fact that he took a pail to go for water, and after he had gone out and locked the door she escaped by a window; the facts alleged so limiting and characterizing the general allegations as to make them ineffectual, Rev. Codes, sec. 8894, defining an attempt as an act done with intent to commit a crime, and "tending," but failing, to effect its purpose, the facts alleged showing at most preparation, and not any act connected with any accomplishment of the purpose.

BASTARDS.

Ex parte Madalina, Cal. 164 Pac. 348. *Prosecution of father where mother of illegitimate child is a married woman.* Civil Code, sec. 195, provides that the presumption of legitimacy can be disputed only by the husband or wife or both of them. Pen. Code, sec. 270, provides that the parent of either a legitimate or illegitimate minor child shall be liable to a criminal prosecution, as each parent is liable under Civil Code, sec. 196a, to a civil action for its non-support. Held, that while under Pen. Code, sec. 270, the father of an illegitimate child may be prosecuted criminally for its non-support, a criminal proceeding will lie against the father only where the child is the illegitimate offspring of an unmarried woman, and will not lie in the case of a child which was born in wedlock though in fact illegitimate, since the state cannot raise the question of legitimacy.

ELECTIONS.

United States v. Gradwell, 37 Sup. Ct. Repr. 407. *Conspiracy to bribe voters at a congressional election.* A conspiracy to bribe electors at a congressional election, or to cause them to vote illegally at a primary election for the nomination of candidates for the United States Senate, cannot be regarded as one to defraud the United States, within the meaning of U. S. Crim. Code, sec. 37, punishing criminally a conspiracy "to defraud the United States in any manner for any purpose," in view of the origin, classification, and use made of this section, which was originally part of an act for the protection of the revenue, and now appears in a chapter of the Criminal Code devoted to "Offenses against the Operation of the Government" rather than in the chapter which deals with the "Offenses Against the Elective Franchise and Civil Rights of Citizens," and of the history and conduct and policy of the Federal government in dealing with congressional elections.

FORMER JEOPARDY.

Reil v. People, Colo. 164 Pac. 315. *Autrefois acquit—Answer*. Where defendant was acquitted of the charge of having had sexual intercourse with a female under 18, the acquittal was a bar to a subsequent prosecution for the non-support of the girl and her illegitimate child.

And if the acquittal was on the ground that the girl was over 18 and not on the ground that he did not have connection with her, the matter should have been set up by the state's answer to the plea.

Scott, J., dissenting.

POST OFFICE.

United States v. Kenofsky, 37 Sup. Ct. Repr. 438. *Mailing fraudulent claim through agency of an innocent superior officer*. A life insurance agent, who, in pursuance of a scheme to defraud the insurance company, delivered to his superior officer a fraudulent death claim, supported by false proofs, knowing that the claim would (as in fact it was) be mailed by the latter in the usual course of business to the home office for approval before payment, thereby violated the provisions of U. S. Crim. Code, sec. 215, for the punishment of any one who, having devised any scheme or artifice to defraud, shall, for the purpose of executing such scheme, "place or cause to be placed" any letter, package, or writing in any post office, to be sent or be delivered by the post office establishment.

SELF INCRIMINATION.

People v. Foders, Cal. 164 Pac. 22. *Requiring automobile drivers to furnish information in case of collision*. Pen. Code, sec. 367c, requiring the driver of an automobile colliding with any vehicle to stop and give aid, and to give information as to the number of his machine and his name and address, and making violation of any provision thereof an offense, does not compel him to give evidence against himself in violation of Const., art. 1, sec. 13.

STATUTE OF LIMITATIONS.

Sikes v. State. Ga. 92 S. E. 553. *Application of statute where prisoner is convicted for lesser offense*. The defendant was convicted for the offense of voluntary manslaughter, under an indictment charging him with murder, which was found approximately nineteen years after the homicide occurred. Held, his conviction can not be set aside upon the ground that the offense of which he was found guilty was barred by the statute of limitations, for there is no statute of limitations for the offense of murder, the crime charged in the indictment. The statute of limitations applicable in the trial of a criminal cause is that which relates to the offense charged in the indictment, and not that which relates to any minor offense of which the accused might be convicted under the indictment.

NOTES AND ABSTRACTS

ANTHROPOLOGY—PSYCHOLOGY—LEGAL MEDICINE

The Physical Examination of Prisoners on Admission to Prison.—

At this time, when prison problems are much in the public mind, and are being discussed in terms of mental efficiency or feeble mindedness; when Binet-Simon tests, point scale examinations, and intelligence quotients seem to be signs of modern prison progress, and the *sine qua non* of juvenile delinquent reformation, a consideration of the physical fitness of the adult delinquent may seem like a reversion to the archaic. But a normal mind requires a healthy body to attain its highest efficiency. How necessary, then, in studying the individual delinquent, that we should endeavor to obtain the physical health survey as well as the intelligence quotient.

While many investigators of prison problems have been dazzled by the opening up of a bright vista, in our recently acquired knowledge of methods for sorting out the feeble-minded, the prison physician cannot lose sight of the other, the physical side of the problem, which offers considerable incentive from the fact that, while feeble-mindedness cannot be cured, physical health may be restored.

Object. The object of our examinations at Auburn, aside from the outlining of individual treatment, has been twofold.

1st. To determine, as accurately as possible for statistical purposes, the actual physical condition of the convicted men at the time of their admission to prison.

2nd. To obtain an idea of the amount of the medical and surgical treatment that would be required to restore these men to the most efficient healthful conditions.

Scope. It is not a complete medical survey of the prison population, but is limited to those admitted during one single year, and does not include those who are already present. Nor does it represent the total amount of medical and surgical work that is required of the medical staff, since it does not comprise the illnesses, injuries, or pathological conditions that arise after these men have been admitted. Indeed, it would be almost impossible to make a complete medical and surgical survey of a population that is constantly fluctuating, as at this institution, where the number arriving during the year exceeded one thousand, and the number departing approximated nearly that figure.

Basis. The basis of this compilation is the records obtained in the routine entrance physical examinations of all inmates admitted to Auburn Prison during the fiscal year of October 1, 1914, to September 30, 1915. This includes not only the men admitted directly from the courts, but also those transferred from other prisons and reformatories as well as those returned for violation of parole or previous escape. During the year there were 1,025 admissions, as follows:

From State Courts.....	364	36	per cent.
From Sing Sing Prison.....	593	58	per cent.
From Clinton Prison.....	33	3.5	per cent.
From violation of parole.....	30	3	per cent.
From escape	2		
From Elmira Reformatory.....	1		
From Dannemora State Hospital.....	1		
From Great Meadow Prison.....	1		
Total	1,025		

Time of examinations. These examinations are made within a day or two after admission, often on the same day, though on the occasion of a large draft from another prison, which may consist of as many as fifty or sixty men, a week or ten days may elapse before the completion of the examinations.

Method. The routine examination is comprehensive and as complete as the usual insurance examination given at a physician's office. The outline of the examination is as follows:

- | | |
|----------------------------|-----------------------------|
| 1. General inspection. | 9. Nervous system. |
| 2. Stigmata of degeneracy. | A. General. |
| 3. Alimentary system. | B. Special senses. |
| 4. Respiratory system. | 1. Eyes. |
| 5. Circulatory system. | 2. Ears. |
| 6. Genitourinary system. | 10. Articular and muscular. |
| 7. Cutaneous system. | 11. Deformities. |
| 8. Glandular system. | |

The patient is stripped, first to the waist, then later completely, so that direct inspection and examination may be made of the whole body. Ureanalysis, hemoglobin estimations, examination of blood and pus stains, blood counts, and other tests that can be rapidly performed are made at once, as indicated, to complete the initial examination. Simple interrogation alone is never depended upon for any part of the examination, but is accompanied by inspection and other forms of inquiry as may seem necessary, to determine any pathological condition. Of course, no assertion is made of absolute accuracy of diagnoses, since many of those admitted require further observation to determine their exact condition, so that the tabulations represent the conditions presented to the examiner on the first examination. This series of examinations has been made by one and the same examiner.

Place. The routine examinations have all been made in the privacy of the physician's office, no one else being present except the physician's clerical or laboratory assistant.

Examiner. The examiner is the prison physician who has been making similar examinations for nearly ten years.

Character of subjects. Those examined are all male adults, ranging in age from eighteen to over eighty years, sentenced for a wide variety of crimes; comprising all classes, from the accidental first term criminal to the recidivist of deliberate choice; representing nearly all occupations, races, and religions, and grading mentally from the medium grade imbecile to those capable of conducting a business or practicing a profession.

Method of classification. As a result of the examinations, the subjects have been graded into three groups, according to the state of health, good, fair, or poor. Such classifications are not made from the medical standpoint purely, but represent working ability as related to the institution, but not necessarily corresponding to their previous mode of living or occupation before admission to prison. Such classification is admittedly arbitrary, but useful as well as necessary.

Total number admitted.....	1,025	
Those in good health.....	800	78 per cent.
Those in fair health.....	147	14 per cent.
Those in poor health.....	70	8 per cent.
	<hr/> 1,017	
Not examined because of early transfer to another institution	8	

SUMMARY OF DEFECTS FOUND

	Good.	Fair.	Poor.	Total.
Alimentary system	1,022	222	130	1,374
Respiratory system	942	235	122	1,299
Circulatory system	98	83	43	224
Genitourinary system	63	38	24	125
Cutaneous system	92	17	23	132
Glandular system	571	116	55	742
Nervous system:				
General	54	19	18	91
Eyes	332	83	29	444
Ears	108	18	11	137
Articular and muscular	194	50	21	265
Deformities	36	10	12	58
Total	3,512	891	488	4,891

Summary of Number of Operations Needed.

Alimentary system	148
Respiratory system	416
Genitourinary system	45
Cutaneous system	7
Glandular system	50
Nervous system—general	3
Nervous system—special senses, eyes.....	37
Nervous system—special senses, ears.....	25
Articular and muscular systems.....	2
Deformities	1
Total	734

The foregoing lists, it will be observed, do not include dental work, of which there is a vast amount indicated, as over half of the total number of men admitted had carious teeth; nor do they include refraction and fitting of glasses for at least 200 prisoners.

CONCLUSIONS.

1. The solution of the medical problem of the prison lies, to a great extent, in the recognition and treatment of pathological conditions at the time of admission of each inmate.
2. The medical staff of the prison, consisting of only two physicians, is much too small to take care of this immense amount of work. As a matter of fact, a staff of two is inadequate to perform a major operation.
3. There should be provided an adequate general medical and surgical staff, as well as specialists in the various branches.
4. This work could best be accomplished through a central clearing house to which all prisoners should first be committed for individual examination, study, diagnosis, and treatment, before being assigned to any particular institution.—Abstracted from article by Dr. Frank L. Heacox of Auburn Prison in *New York Medical Journal*, Jan. 13, 1917. Copyrighted by the A. R. Elliott Pub. Co.

Syphilis a Factor In Cause of Insanity.—Although the state of California cared for 10,331 insane patients during 1916, providing them with the very best of care, there is almost nothing done in the prevention of insanity. The insane in California receive the best of care. This is certainly as it should be, for these unfortunates are entitled to the very best of treatment. While

the care of the insane is important, the prevention of insanity should receive even greater attention. One of the most important of the preventable causes of insanity is syphilis. The superintendent of California State Hospitals states that 1,010 patients out of 6,935 admitted to state institution in the last two years were syphilitic—14.5 per cent. He states further, "In not all persons admitted who are syphilitic is it possible to connect the mental trouble with the syphilitic disease, but of the 1,010 syphilitics admitted 554, or 54 per cent, were victims of parietic dementia, a definite result of syphilis and an incurable and fatal form of mental trouble. Thus out of the 6,935 cases admitted, 553, or 8 per cent, were parietics with syphilis as the undoubted cause. Not more than 2 or 3 per cent of syphilitics develop parietic dementia, but the latter is such a hopeless and fatal form of disease that prevention of the cause is of vital importance." While there are many other factors entering into the cause of insanity, this one is of special importance from the public health point of view.—*California State Board of Health Bulletin*. From *Public Health*, March, 1917, Lansing, Mich.

Syphilis and Society.—Obviously it approaches the platitudinous to state that venereal diseases are a menace to society. It would be no exaggeration to assert that these diseases are the greatest source of danger to health known, and that if they could be stamped out, or even effectively controlled, the world would not only be a better place in which to live, but much suffering by the innocent would be avoided. The control of venereal disease is essentially a public health problem, and one of which a successful solution seems almost impossible. In Europe conditions have greatly increased the prevalence of these so-called society diseases, and efforts are being centered upon the determination of means whereby the "plague" may be stayed.

In America the problem is becoming quite as serious, especially since the measures taken to check the spread of syphilis and gonorrhea have not met with any conspicuous success.

With regard to the regulation of syphilis, we may well ask, why is it that the question presents so many and seemingly insurmountable difficulties? Much is known concerning the disease, probably more than is known of any other single malady. As Dr. William Allen Pusey points out in the very excellent January number of the *American Journal of Syphilis*—a new publication of a very high order devoted to this particular disease—we are acquainted with all the essential facts which are necessary to an intelligent sanitary attack upon it. Indeed there is at our disposal the means for an overwhelmingly strong sanitary campaign against the disease. At the outset it may be conceded that if syphilis were a purely medical problem, there would be no particular necessity to provide for its effective sanitary control; inasmuch as this is not the case, it is difficult to understand why measures of known efficiency have not been more actively employed. It would appear that the necessary steps in this direction should be taken without delay. The truth of the situation really is, however, that syphilis is more than a sanitary problem, and it is this which has presented the chief stumbling block to the realization of success in the struggle with this disease. As a matter of fact, it is as much a social question as a sanitary one, and on account of the disease being in the main venereal in origin, concerns man in his most intimate social relations. The victim of the malady, even though innocent, as a consequence of the invariable suspicion

attached to its acquirement, spares no effort to keep his condition secret, and it is this aspect of the situation that renders any sanitary campaign waxed against it so difficult to conduct.—From *American Medicine*, Feb., 1917.

Courts and Public Health.—Social justice should be evidenced in court decisions. With the development of new ideas and ideals in the body politic there should be a reflection of public sentiment in the interpretation of laws which were established previous to the birth of the new point of view. It is proper that courts basing their decisions and opinions upon established law should be conservative in breaking with the past. To alter statutes, as rapidly as the communal opinion is changed, would soon breed chaos and disorder. There is, however, a distinct tendency for our judicial authorities to take cognizance of the needs of society and to interpret liberally the powers and duties of health departments, legislatures and philanthropic social organizations seeking to improve the public health. In *Public Health Reports*, March 30, 1917, is a digest of judicial opinions published during the calendar year 1916. As illustrative of the advance made through law, a few items merit more than passing notice.

The United States Supreme Court decided that Congress has power "to keep the channels of interstate commerce free from the carriage of injurious or fraudulently branded articles and to choose appropriate means to that end," and to forbid the shipment in interstate commerce of drugs which are accompanied by false and fraudulent statements regarding their curative effects.

Numerous errors in judgment are bound to result in the mad rush to enact health measures and there is much justice in the decisions:—"To be valid as a health measure a statute or ordinance must provide real protection to the public health;" "ordinances should be reasonable and not unnecessarily burdensome."

A serious question arises from the decision that the contracting of typhoid fever by employes from drinking impure water furnished by the employers is an accident. On the same theory a city supplying an impure and polluted water occasioning the development of typhoid fever among its citizens might be held responsible and damages recovered.

The New Jersey Court of Chancery issued a decision that a marriage cannot be annulled because of fraudulent concealment by one party of his or her physical condition "unless the disease is of such a nature as to render contact seriously dangerous to the other party." Application of this brings up a wide field of inquiry and affords opportunities for many suits for annulment.

In the field of workmen's compensation there are many contradictions. Occupational diseases have not been included in most of the workmen's compensation laws, wherefore the interpretation as to what constitutes an accident or personal injury and what is to be regarded as a disease have been made the basis of various decisions. On the one hand, pneumonia has been held to be a personal injury, while lead-poisoning has been regarded as a disease. Tuberculosis and ivy-poisoning also have been deemed to be accidental injuries arising out of and in the course of employment. These varying interpretations naturally depend upon differences in the wording of the various state laws. It is unfortunate that greater uniformity has not been secured so as to enable the construction by the Supreme Court of one state to serve as the law in another state.—From *American Medicine*, April, 1917.

COURTS—LAWS

Prison and Penal Legislation Adopted by the General Assembly of Louisiana In 1916.—Act No. 13. Proposing an amendment to the Constitution so as to have a juvenile court in every parish of the state; the amendment was adopted in November, 1916.

Act No. 14. Prohibiting the sale of malt liquors in dry territory.

Act No. 15. Prohibiting the purchasing from a minor under seventeen years of age by any junk dealer.

Act No. 18. Prohibiting the removal from any quarantined area of tick-infected cattle.

Act No. 22. Providing that the crime of embezzlement by the drawing of any check or draft shall be cognizable by the district court of the parish where the document was executed.

Act No. 27. Imposing penalties for the failure to send children to school, and that truant cases be tried in the juvenile courts.

Act No. 35. Providing penalties for violation of the primary election laws.

Act No. 40. Providing penalties for violation of the health laws.

Act No. 78. Providing a penalty for failing to record the purchase of hides.

Act No. 81. Authorizing the sheriff to administer oath in criminal cases regarding the taking of bonds.

Act No. 84. Proposing an amendment to the Constitution regarding the compensation of the district attorney for the Parish of Orleans. The amendment was adopted in November, 1916.

Act No. 89. Creating the offense of "unlawfully having in one's possession combustibles or explosive substances with the malicious intent to destroy property." This law was passed to overcome the effect of a decision of the Supreme Court that the possession of the articles named without proof of their use was not a violation of any existing law.

Act No. 93. Providing that in criminal cases tried by the judge alone, propositions of law could be presented and exceptions reserved to be considered by the Supreme Court the same as in the case of charges to juries.

Act No. 102. Providing a penalty for assignment of wages without the consent of the wife and for charging usurious interest.

Act No. 103. Prohibiting gambling within five miles of the Sikes Public School.

Act No. 108. Providing a penalty for failure of certain corporations to pay their employees twice a month.

Act No. 113. Prohibiting and regulating in certain cases the shipment of liquor.

Act No. 118. Providing a penalty for failing to have separate ticket offices for circuses and traveling shows for the white and colored races.

Act No. 122. Amending the laws regarding the drawing of juries.

Act No. 123. Providing for the indeterminate sentence.

Act No. 124. Extending the indeterminate sentence to prisoners now in the penitentiary.

Act No. 125. A new parole law.

Act No. 127. A statewide ticket radication law and imposing penalties for the violation thereof.

Act No. 130. The general election law and the creation of several offenses thereunder.

Act No. 132. Amending the law creating the State Board of Embalming and Undertaking and providing for penalties for the violation of the provisions thereof.

Act No. 139. Punishing parents for contributing to the delinquency of minor children.

Act No. 146. Making it a misdemeanor for failure to provide safeguards around machinery.

Act No. 156. Making it a misdemeanor to use without the written consent of the owner, bottles or syphons belonging to others.

Act No. 157. Relating to the competency of witnesses.

Act No. 159. Regulating the practice of chiropody, and providing certain penalties for violation of the act.

Act No. 160. An Act to carry into effect the amendment provided by Act No. 134.

Act No. 163. Making it an offense for a nurse or mid-wife to administer anæsthetics, except by direction of a physician.

Act No. 164. Regulating moving picture buildings and providing penalties for violation of the Act.

Act No. 169. Requiring banks to return to the assessors statement of their property and providing penalties for their failure so to do.

Act No. 170. Requiring title guarantee companies to deposit \$25,000.00 with the State Treasury and providing penalties for doing business without such deposit.

Act No. 134. Opposing an amendment to the Constitution to enable the Board of Control of the State Penitentiary to fund its indebtedness and issue notes therefor not exceeding four thousand dollars. The amendment was adopted in November, 1916.

Act No. 173. Repealing Act No. 208 of 1910, regarding the killing of sea-gulls.

Act No. 177. Regulating the employment of women and children and providing penalties for violation thereof.

Act No. 178. Prohibiting gambling within five miles of Hall's Summit High School.

Act No. 188. Prohibiting black-listing and providing penalties.

Act No. 189. Requiring that outside of the City of New Orleans, tax collectors shall send to the Superintendent of Education a list of persons paying poll taxes and providing penalties.

Act No. 195. Providing for the registering of voters and fixing penalties for false registration.

Act No. 198. Prohibiting gambling within five miles of the Elizabeth Graded School and providing penalties.

Act No. 208. Prohibiting the diversion of electric current, gas and water and providing penalties.

Act No. 209. Changing the law regarding the offense of malicious killing of beasts the property of another.

Act No. 212. Prohibiting gambling within five miles of the Naborton Public School.

Act No. 218. Regulating certain forms of insurance and the countersigning of policies and providing penalties for the violation thereof.

Act No. 219. Protecting certain animals and birds and providing for the violation of the Act.

Act No. 220. Prohibiting the sale of liquor to women and the employing of women in places where liquor is sold and providing penalties.

Act No. 221. Amending the law regarding banks and providing certain penalties.

Act No. 222. Regulating the giving of bonds by officers of banks and providing penalties.

Act No. 228. Making it an offense for officers of homestead associations to present false reports and providing penalties.

Act No. 223. Prohibiting combinations in the sale of commodities and providing penalties.

Act No. 234. Providing that the books and records of certain corporations shall be subject to inspection and be evidence before grand juries.

Act No. 249. Making it a crime to steal attachments of locomotives or cars and providing penalties.

Act No. 250. Making the pledge of articles for cars by unauthorized persons an offense and providing penalties.

Act No. 258. Amending the laws regarding the killing of certain birds out of season and providing penalties.

Act No. 270. Making it a misdemeanor to compel employes to pay any part of the premium on liability policies and providing penalties.

Act No. 272. Amending the bird preservation law in certain particulars and providing penalties.

Act No. 273. Making it a misdemeanor to sell junk when unpaid for and providing penalties.

Act No. 137. Creating the office of general manager of the State Penitentiary.

Act No. 46. The general appropriation law contains on page 153 appropriations to the State Penitentiary.

W. O. HART, *New Orleans, La.*

Leniency In the Administration of the Criminal Law.—The late Mr. Edmund D. Purcell in his recently published work, "Forty Years at the Criminal Bar," bore testimony to the fact that leniency in the administration of the criminal law, which was in times gone by achieved mainly through the exertions of Sir Samuel Romilly, who sought to reduce the severity of sentences fixed by common law or statute, has in recent times been in large measure secured by the humanity of judges in the exercise of a discretionary power, in cases in which such power is vested in them, in sentences on conviction. Mr. Purcell instances this trend of the judicial mind towards gentler treatment of criminals by directing attention to the fact that, whereas in 1877 no fewer than seventy-five persons received sentences of fifteen years' penal servitude and eighty-six persons sentences of ten years' penal servitude at the Central Criminal Court, in 1912 no one was sentenced to fifteen years' penal servitude and three persons only to ten years' penal servitude. This tendency to mildness rather than severity in the awarding of punishment for guilt is manifested by an incident at the

London Sessions the other day. Mr. Allan Lawrie had before him three appeals against sentences in which the appellants had pleaded guilty in the court below. Mr. Lawrie said the Bench had come to the decision that they had no jurisdiction to hear appeals in cases in which the appellants had pleaded guilty, but that the court, while dismissing the appeal, would make a representation to the home office that it was highly desirable that provision should be made for appeal against sentence even when the defendant had pleaded guilty. The tendency of the movement in favor of criminal reform at the present time is to place a larger discretion in the judge in the award of punishment and to reduce, if not, indeed, to remove, from the statute-book and from common law the cases in which on conviction for crime the sentence is removed from the discretion of the judge. The Penal Code, which Burke strongly urged the necessity of revising, which he described as "radically defective" and "abominable," whose softening was undertaken in the early years of the nineteenth century by Sir Samuel Romilly and his successors in that great work, was an enormous and undigested mass of capital offenses, which made the criminal law a mere sanguinary chaos. Previous to the Revolution, the number of capital offenses is said not to have exceeded fifty. During the reign of George II. sixty-three new ones were added. In 1779 the number was estimated in Parliament at 154, but by Blackstone, writing in 1765, at 160, and Romilly observed in 1786 that since the appearance of Blackstone's Commentaries it had considerably increased. In Parliament the enactment of new capital offenses was regarded as a mere formal matter. Burke relates that, being stopped one night when leaving the House of Commons and requested by the clerk at the table to stay to make a House, he asked what was the business in question, and was answered, "Oh, sir, it is only a new capital felony." At the present time, exclusive of treason and murder, only three crimes are punishable with death, while the establishment of a Court of Criminal Appeal, the prerogative of the pardon remaining wholly unaffected and the undoubted leaning of the judiciary to mercy in the infliction of sentences, have powerfully contributed to banish from the criminal law of England the barbarities and absurdities by which it was for generations tarnished.—*Law Notes*, Jan., 1917.

New York Municipal Civil Service Examination for Court Attendant. (June 14, 1917).—1 Write a report to the Chief City Magistrate, stating your action in the arrest in the courtroom of a man who was subsequently found guilty of an attempt to throw a bomb in the courtroom. Include in this report what aroused your suspicion in this case, what investigation you made before taking any action and exactly what action you took in this case.

Sign this report "John Doe, Court Attendant, First District Magistrate's Court." If you sign any other name, title, number or initials you will be disqualified. Handwriting (Wt. 1) will be rated on this report.

2. (a) Explain clearly the difference between a felony and a misdemeanor. (b) Name three crimes which are always felonies. (c) Name three crimes which are always misdemeanors.

3. (a) How are convicted criminals finger-printed? (b) How is an expert able to determine whether a criminal has been finger-printed before?

4. While serving as a court attendant in a city magistrate's court a man applies to you for a summons, stating that John Doe has his watch and will not

give it up. (a) What additional facts would you endeavor to obtain from him before letting him speak to the magistrate? (b) Name two cases in which he would be entitled to a summons from the magistrate because of the detention of his watch. (c) Name two cases in which he would not be entitled to a summons from the magistrate because of the detention of his watch.

5. During a session of the City Magistrate's Court the following persons are in the courtroom: The city magistrate, the court stenographer, two interpreters, eight clerks, five court attendants, one captain of court attendants, eighty-four prisoners, each of whom is arraigned by an arresting police officer; a complainant and three witnesses in eighteen cases; a complainant and two witnesses in thirty-four cases; a complainant without any witnesses in seventeen cases and in the remaining cases the arraigning police officer prosecuted the prisoner without any complainant or witness. In addition thirty-eight persons applied to the magistrate for a warrant and twenty-seven persons applied for summonses. Under the regulations of the Board of Health each person should have nine cubic feet of air. The ventilating system of the courtroom provided 2,289 cubic feet during this session of the court. Prepare a report to the Chief City Magistrate presenting the facts in this case in neat tabular form and showing whether the ventilating system is adequate or inadequate and the number of cubic feet of excess or deficiency at this session of the court.

6. In what court in the Borough of Manhattan of the City of New York are each of the following cases tried: (a) A man who has been arrested for intoxication in a public place? (b) A trial for murder? (c) A chauffeur arrested for driving without a license? (d) A suit of a plumber for \$12 wages? (e) A suit for \$10,000 damages for injuries caused by a fall? (f) A counterfeiter?

7. What is meant by the following: (a) Treason? (b) Drug addiction? (c) Seduction? (d) Juvenile delinquency? (e) Probation.

8. (a) Mention two matters against which you would guard especially if placed in charge of a court pen for prisoners awaiting trial. Give your reasons for your answer. (b) If assigned to get ten prisoners from the city prison, supervise their arraignment in court and return the convicted prisoners to the city prison at night, what system would you use to make certain that every prisoner is properly accounted for. Describe the system fully and give your reason for each precaution adopted by you.

PENOLOGY

Wardens' Letters Re Utilization of Prison Labor in War Time.—The following letters were addressed to the National Committee on Prisons and Prison Labor:

From the California State Prison, San Quentin. J. A. Johnson, Warden.

We are fully alive to the advisability, and indeed necessity of intensified farming as outlined in your letter of April 26th, and we are doing all that is possible, or at least practicable, for us to do in this connection.

We have a very limited acreage adjoining the prison in this state, but in conjunction with the prison system we have one 2,700-acre farm in an adjoining county, and the advisability of working that to the utmost has been presented and is being urged.

From the Colorado State Penitentiary, Canon City. Thomas J. Tynan, Warden.

In my judgment, 60 per cent of the sane, able-bodied men now confined in the penal institutions, both state and federal, of the United States, are trustworthy, and if properly handled can be made available for work anywhere in the United States. Our experience in handling honor men at the Colorado State Penitentiary proves this beyond question. Of course, there are the other 40 per cent who are mentally defective and truly dangerous men from whom society must protect itself.

* * * Colorado is farming thousands of acres of land in its state farms with prisoners and maintaining six large road camps constantly in the construction of roads. In eight years they have constructed 1,500 miles of probably the most perfect highway in the world. Eighty per cent of the men leaving the institution make good citizens in so far as we can check them up. I do not believe that the promiscuous working of convicts on individual farms, controlled and operated by citizens, would be a success. I believe that large tracts could be leased or handled by the various states and the nation where the men can be properly handled by skilled overseers in the employ of the various institutions who have been trained at the prison, as we do in Colorado. * * * I believe they should be paid a small wage. While we do not do this in Colorado, I have always been in favor of it, for we are now doing work to the value of \$2.50 per day by prisoners on the highway at a cost to the taxpayers of the state not to exceed 40 cents. The state could well afford to pay a little wage besides the good time allowance.

There are 4,000 convicts who are practically going to wreck and ruin from idleness in the different penitentiaries and 2,000 of these could be producing a great deal in crops or could be employed in the construction of highways in the national parks or forest reserves in the West.

On April 11th I sent the following telegram to President Wilson on this very subject: "May I not suggest as an aid to increased food production that the government urge all states, as well as superintendents of federal penitentiaries, to immediately utilize their trustworthy prison population in crop production according to Colorado's plan? This would mean placing at farm work 40 per cent of all the men now confined in the prisons in the United States and would put at work on the soil many thousands of men now either idle or engaged in less profitable pursuits than crop production."

*From the Louisiana State Penitentiary, Baton Rouge,
Henry L. Fugua, General Manager.*

Our prison population is about 1,900, one-third of which is employed in the construction of levees on the Mississippi River and the other two-thirds in farm work. We have four plantations, the chief money crop of which is sugar cane, the bulk of which we manufacture ourselves into a very important foodstuff, namely, sugar. We are endeavoring to raise everything possible in the way of foodstuffs that we consume for man and beast. We will have this season about 4,600 acres in sugar cane; 3,000 acres in corn; 200 acres in oats; 75 acres in Irish potatoes; 100 acres in sweet potatoes, and about 150 acres in truck and vegetables of various kinds, and planted in with the corn, about 2,500 acres of cow peas, soy beans and velvet peas, which, in our climate, do not produce much in the way of peas, but do furnish a magnificent forage or hay crop.

We are producing also hogs and cattle, but are not yet in a position to produce anything like our own consumption, though all plans and efforts are headed in that direction. We appreciate, in peace times, the value of home production, and so you may realize that we doubly appreciate such a policy at this time. We will do our best to "rally around the flag."

From the Minnesota State Prison, Stillwater, Minn. C. S. Reed, Warden.

We have within the last few weeks purchased additional land for the prison farm and are now doing intensive farming on 800 acres, employing from 100 to 150 men in this work. We have finished planting 80 acres of potatoes and will have in large crops of vegetables, grain, corn, etc. We realize the great importance of this work and are bending every effort to the end that we may have "plenty and to spare." We recognize that agriculture is most beneficial to inmates of penal and reformatory institutions, and that under present conditions large crops are to be desired. We are in every way attempting to utilize every acre of ground belonging to the state.

From the Vermont State Prison, Windsor. R. H. Walker, Superintendent.

For the past few years we have cultivated a large farm which has recently been enlarged to 500 acres. Besides raising large quantities of garden truck we have in the past year conducted a very successful and productive dairy and also raised something over a hundred pigs. These activities will be carried on on an even more intensive scale this year, with the expectation that the institution will do its share in the public service.

We have 600 acres of land seeded to crop this year and have obtained 1,600 acres of virgin land that will be made ready this year for seeding in the spring. We are thus increasing the state's resources where, I consider, they will be most needed.

The last legislature made an appropriation for the construction of a new dairy barn to replace the wooden structure now in use. The new barn will be built entirely by prison labor, out of rock quarried from one of the best quarries in the state, located on the prison reservation. We already have a concrete silo built and sufficient ensilage to run us until our new crop is harvested.

We have always heretofore raised sufficient garden truck and fruit to supply the institution's needs, but this year we are planting about five times the amount of garden ever planted before. I have contracted for a small canning outfit to care for the surplusage of garden products and fruits. A large portion of our fruit, in the past, has gone to waste on account of the lack of facilities to care for it. I have purchased a drier to care for such fruit as will not can, thus supplying not only our own institution, but also to some extent the other institutions supported by the state.

These are but brief outlines of the work we intend to carry on in the endeavor to render our institution as nearly as possible self-supporting. We have a small tailoring equipment sufficient to make the clothing required for all the inmates with the exception of underwear and socks; a small shoe shop making all of the shoes required by the prison, a laundry, blacksmith shop, etc. In fact, we have a small city of our own. Furthermore—and what to me seems very important—we have the enthusiastic co-operation of the inmates in carry-

ing out these plans, as they realize it is much to their interest—more so than to the state—that these various enterprises be made a success.

I am a firm believer in the honor system, using convict labor on the prison farm, 42 miles from the prison, with only a civilian foreman, no guards, guns or dogs being allowed on the place.

Nor has my attention been entirely occupied with the employment of convicts in the production of food values, but I have improved the school and various educational enterprises connected within the walls of the prison. We have an excellent band under the competent instruction of our parole officer—an officer recently appointed by our legislature in its endeavor to have our penitentiary perform its real duty in the social and economic world. Our parole officer also has under his supervision the school work. An examination is made of every prisoner consigned to the institution as to his physical and mental qualification and if deficient the condition is thus discovered.

I have been and am encouraging athletic sports. We have one of the fastest baseball teams in the state and stand ready at all times to meet all comers, whatsoever their class.

By the intelligent co-ordination of work and play we are turning out men fit to take their proper place in society as bread-winners—not bread-burners.

From the Idaho State Penitentiary, Boise City. Frank E. DeKay, Warden.

Referring to your circular letter of April 26th regarding the utilization of prison labor in order to obtain increased production of food values of all kinds, I beg leave to submit the plans that we are working out here in our endeavor to make this institution as nearly self-supporting as it may be and yet conserve the health of the prisoners and make them fit men to be turned back into society at the expiration of their imprisonment.

I became warden of the penitentiary January 1st, this year, and immediately investigated to ascertain the legitimate employment followed by each prisoner prior to his commitment. I discovered prisoners highly trained in the handling of horses, hogs, dairies, farms and even turkeys. I have placed these men in charge of various departments of the penitentiary. I employed one man at the prison reservation and one man at the prison farm—42 miles from the prison—as farm superintendents, who are carried on the prison payroll as guards, drawing a slightly higher salary than the regular guards. The sentences of the men are disregarded to a great extent in making them "outside trusties," the only requirement being that they shall convince me that they are trying to make good. I use the honor system outside of the walls, no guns being allowed with, around, or over the prisoners.

I have a "lifer" working with the hogs on the prison farm who has increased his herd from 20 to 150 hogs. He had had an extensive experience with hogs before coming to the institution and was thus enabled to apply his hard-earned knowledge to the profit of the state. If he continues his good work this fall meeting of the Board of Pardons will undoubtedly see him a "lifer" no longer.

With the dairy herd, composed largely of Holsteins headed by a registered Holstein bull, I have as foreman a Swiss who has followed the dairy and cheese business all his life. He is bringing the herd up to a high standard

He is ably seconded by another prisoner who learned his trade in the thorough school of experience.

Our poultry is handled by a "lifer" who has made a hobby of the care of chickens from both incubator and hen mothers and is showing by the results he is obtaining that his knowledge of the subject is thorough and practical. Turkeys, that are supposed to have a hard time reaching the age when they are available for table use, are under the care of an old soldier, who vies with the chicken man in showing results. He has been exceptionally successful thus far.

We are using as many of the prisoners on outside work as possible, having at present 35 per cent of the total number confined at work outside of the walls upon the prison reservation and farm.

Massachusetts Society for Aiding Discharged Prisoners.—Extract from report of the agent, George E. Cornwall, presented to the annual meeting, May 28, 1917. The recommendation contained therein was adopted by unanimous vote:

"For some time the officers of the society have been endeavoring to extend its work. The fact that we were not spending all of our income had led them to give this matter much thought. Our society is statewide, as its name implies. Its funds have mostly been supplied from Boston and vicinity. Our headquarters must necessarily be in Boston, where the majority of the prisoners are to be reached. There are many prisoners released from the county prisons, located at such a distance that few of them receive help from us, it not being practicable for them to come to this city and return to their home towns, neither is it possible for the agent to see them personally without neglecting more important work in Boston, as well as incurring much useless expense.

"To reach these men in an economical manner the agent asks that he may be authorized to arrange with the masters of such houses of correction as he deems advisable, to expend for the society not exceeding one thousand dollars (\$1,000) for the year ending April 30, 1918.

"It is probable that this extension of our work to other sections of the state will encourage contributions from those localities, thus providing funds for still further extension of this help to all of the county prisons of the Commonwealth."

This is a move in the right direction. The masters of the different county prisons know each of their charges intimately; they can readily distinguish between the deserving and the undeserving. The money can thus be wisely expended and made to do a great amount of untold good to the unfortunate prisoners. The days of the vulgar sneer and the ignorant slur at the efforts of humanitarians who are determined to aid the discharged prisoner are happily over and the X-ray of intelligence has pierced the armor plate of ignorant fault-finding.

JOSEPH MATTHEW SULLIVAN, *Boston, Mass.*

POLICE

The Canadian Criminal Identification Bureau: Annual Report, 1916.—The gigantic and all-embracing character of the war now raging on three continents is exemplified by the fact that there is no phase of national life,

moral, physical, social, economic, or administrative, which it does not effect—crimes and criminals are not immune from its influence. The report of the English Commission of Prisons for 1915 shows that twenty prisons were closed or in process of closure during that year, eleven having been closed entirely. Between the years 1904-5 and 1913-14, the total convictions decreased from 586 per 100,000 population to 369; in the year ended March, 1915, it dropped to 281 per 100,000. The prison estimates for 1916 were \$500,000 or 12 per cent below the previous estimates. The decrease in crime is attributed to: (1) The drafting into the army of a considerable section of the population from which the criminals usually come; (2) the increased and new demands for remunerative labor; and (3) the restriction of the liquor traffic.

The annual reports of the Canadian police departments issued during the war period invariably show a marked decrease in the number of crimes committed and arrests made; and no doubt this can be attributed to the reasons given above as accounting for the falling-off in the crime statistics of the English prisons. The Canadian Criminal Identification Bureau being, in its nature, a clearing house for the criminal records of the different police departments and prisons, must of necessity reflect in its annual report the lowering of the crime statistics which they experience. The subjoined statistics show a considerable decrease in the number of finger-print records received, which would have been more pronounced had not new sources of supply arisen during the year.

The event which stands out most prominently before my mind, when reviewing the work of 1916, is the hearty co-operation voluntarily accorded us by the prison authorities of the State of Washington, U. S. A. On January 19, 1916, we received the following communication from the superintendent of the Washington State Penitentiary:

"Walla Walla, Wash., January 13, 1916.

"Department of Justice, Ottawa, Ontario.

"Gentlemen: I take this opportunity of ascertaining if it would be possible for us to send you finger prints of all men received at this institution in the future, and if you would notify us in the event of their previous arrest, or their arrest after they are released from here; in other words, we would like to become identified with your department.

"We, no doubt, have men who are incarcerated here that are badly wanted by the authorities and could only be identified through your department, and many criminals there that are wanted by this institution, and their record could only be obtained as mentioned above.

"Of course, we would, should you desire it, use any form that you suggest to fit in with your files.

"Trusting I shall have the pleasure of hearing from you in this matter, I am,

"Very truly yours,

"HENRY DRUM, *Superintendent.*"

The above offer of co-operation was gladly accepted, and a supply of finger-print and descriptive forms was mailed to Superintendent Drum.

In a communication dated July 25, 1916, the superintendent of the Washington State Penitentiary informed us that at a recent meeting of the Sheriffs'

Association of that state, a resolution was passed that each sheriff take the finger prints of all prisoners held in their respective county jails, of whom they had no record or knew nothing about; and arrangements were made whereby the identification department of the Washington State Penitentiary should handle and classify such prints; in other words, act as a central bureau of identification for the state. The superintendent sent us, by the same mail, a number of prints received from the sheriffs, and has continued to mail to this department all finger-print records received from the same source up to the present.

On October 10, a communication embodying a similar offer of co-operation to that contained in the aforequoted letter, was received from Mr. Donald B. Olson, superintendent of the Washington State Reformatory, Monroe, Wash. This offer was likewise thankfully accepted and a supply of forms and envelopes mailed to the superintendent.

On December 18, Mr. D. E. Nickelson, Superintendent of Identification at the Washington State Penitentiary, wrote this department as follows:

"Walla Walla, Wash., December 18, 1916.

"Mr. A. P. Sherwood, Chief Commissioner of Dominion Police, Department of Justice, Ottawa, Canada.

"Dear Sir: I have recently returned from the Washington State Reformatory at Monroe, Washington, where I have taken finger prints of the entire inmate population, and am mailing you same under separate cover today, the lowest number being 461 and highest 2955.

"As you already know, we are establishing in this department a central bureau of identification for the entire State of Washington, and in the future will handle all the identification work for the State Reformatory in a similar manner to that of the sheriffs', with which procedure you are fully conversant.

"You will therefore kindly address all correspondence relative to the Monroe prints to this institution, and in cases where identification are made we will immediately forward such information to the Monroe authorities, and at the same time make the necessary notations upon our copies of the same prints which we hold on file here.

"Trusting that I have made this matter clear, and thanking you for your kind co-operation in this work, I have the honor to be,

"Very truly yours,

"HENRY DRUM, Superintendent.

"By D. E. NICKELSON, Supt. of Identification."

The finger-print records accompanying the above-quoted communication numbered 256, and as demonstrative proof of the mutual benefit to which such co-operation in the matter of criminal identification conduces, I beg to bring to your attention an identification obtained from the finger prints taken by Mr. Nickelson at the State Reformatory, Monroe.

Included in the Monroe prints were those of No. 2044, Joseph Carron, *alias* Frank Clark, who was sentenced at Kittitas County, Washington, on June 28, 1916, for grand larceny. This man's finger prints proved him to be identical with our No. 13064, August Pacaud, sentenced at Macleod, Alberta, July 21,

1913, to a term of five years in the Alberta Penitentiary, for horse stealing. He was released from the penitentiary on parole, July 4, 1914, and reported up to and including the month of April, 1915, after which time no trace of him was discovered. As the result of the receipt of his finger prints from the Washington State Reformatory, and their subsequent identification, a revocation of the license granted him July 4, 1914, has been recommended to the Minister of Justice; and arrangements will be made to have him brought back to this country on the completion of his term at Monroe—to serve out the unexpired portion of the term he was serving in the Alberta Penitentiary when released from there.

Another identification worth noting in this report, and one made possible by the receipt of finger prints from the Washington State Penitentiary, is that of one James E. Bausman, *alias* James Edward Brown. The finger prints of James E. Bausman were received from the state penitentiary May 2, 1916, with the information that he had been sentenced at Seattle, Washington, on February 17, 1915, to six to fifteen months' imprisonment, for grand larceny, and was then wanted by the penitentiary authorities for escaping from his parole. Bausman's finger prints proved him to be identical with our No. 31414, James Edward Brown, who was sentenced at Victoria, B. C., March 24, 1916, to two years in the British Columbia Penitentiary for forgery. Acknowledging the notification of identity, Superintendent Drum informed us that he would lodge a retainer for this convict's return to his custody, on the completion of his term at New Westminister.

As your representative, I attended the convention of the Chief Constables' Association of Canada held at Kenora, Ont., July 5 to 7, and read a paper on the proper method of taking finger prints and criminal photographs, and the necessity of both being of as high a standard as it is possible to obtain. That portion of the paper explaining how to take photographs of the required standard was particularly interesting to the members of the association, it being the first occasion on which this branch of criminal identification was treated of at our conventions. Much useful discussion followed the reading of the paper, and I trust that it will help us to arrive at a uniform standard in criminal photography.

I am pleased to inform you, sir, that the bureau's files continue to be an ever-increasing source of reference and useful information to the Dominion Immigration Department, the Ontario Parole Commission, and to the "Ticket-of-Leave" branch of your department.

The number of inquiries received, as well as those instituted by this department, in which photographs were required, multiplied to such an extent in 1916 that much more time had to be devoted to photographic work than formerly.

Constable H. R. Butchers, who has been a member of this staff since February, 1912, enlisted in the Canadian Divisional Ammunition Column for overseas service in February, having been granted leave of absence by you, sir, for that purpose, and is now on active service—"Somewhere in France."

A total of 8,009 finger-print records were received during the year, being a decrease of 1,321 as compared with the previous year.

The identifications numbered 629, showing a decrease of 127 compared with 1915; 464 of these identifications were made from the finger prints of prisoners whose cases had been disposed of, and the remaining 165 from the

prints of those who were on remand or awaiting trial at the time their finger prints were received.

Ten parole violators and nine escaped prisoners were discovered by means of finger-print identification during the year.

The filing cabinets contained, at the close of the year, the records of 29,668 individuals.

The following police departments and prisons were added during the year to the list of those who have received finger-print outfits: Canadian Pacific Railway Investigation Department, North Bay, Ont.; Copper Cliff, Ont.; Edmunds, B. C.; Fort Saskatchewan Jail, Alberta; Napanee, Ont.; Newcastle, N. B.; Parry Sound, Ont.; Port Hope, Ont.; St. Stephen, N. B.; Weyburn, Sask.

Respectfully submitted,

E. FOSTER, *Inspector.*

Finger-print records numbering 8,009 were received by the Canadian Criminal Identification Bureau from all sources during the year ending December 31, 1916.

JOSEPH MATTHEW SULLIVAN, *Boston, Mass.*

Police Schools.—Much interest is being manifested in police schools throughout the country. One of the latest cities to start police officers upon a school career is Cambridge, Mass. Through the efforts of the mayor of Cambridge, a course was arranged for the police officers of that city by Harvard University. Following is a list of the subjects taken up:

Police Work in Europe and America.....	R. B. Fosdick
The Organization of a Police Department.....	R. B. Fosdick
The Training of a Policeman.....	R. B. Fosdick
Duties of the Uniformed Officer.....	R. B. Fosdick
Newer Methods of Detection and Identification.....	R. B. Fosdick
The Methods of Patrol.....	C. F. Cahalane
Duties of the Man On Post.....	C. F. Cahalane
The Management of the Station House.....	C. F. Cahalane
Thieves, Their Methods and Detection.....	C. F. Cahalane

Los Angeles Daily Police Bulletin, December 7, contains the following:

"In establishing the police training school it is intended to provide means whereby all members of this department may benefit by having all subjects pertaining to police work taken up and thoroughly discussed and analyzed by someone who has had the experience and opportunity to make himself thoroughly familiar with all phases of police procedure.

"This school will follow closely the lines of the New York training school, which has been in existence for several years under the supervision of Police Lieutenant Cahalane, who is recognized throughout the country as an authority on police procedure.

"It is my earnest desire that every officer in the department take up this work and persistently apply himself. The promotions of the future will come from the ranks of today. The man who idles his time away will be left at the post, while the man who applies himself will be prepared to meet any

emergency as a patrolman and will be forearmed when examinations for promotion are called.

"It is my desire that this department not only retain its present reputation for efficiency, but that it increase that efficiency, and I know of no better way to do it than to give a few hours monthly to the study of police matters.

"The department has a splendid personnel and one which will be greatly benefited by this training.

"The Public Library contains numerous volumes covering the several branches of police work. These books, besides being very interesting, are instructive, and I trust you will take up at least one line of supplemental reading in addition to the regular course given in the school."

Stockton, Cal., has also established a police school, the faculty consisting of prominent physicians, attorneys and educators. Lectures on various subjects pertaining to the police are delivered weekly before the police class. No examinations are held at this time.

A school for detective sergeants has been inaugurated in the San Francisco Police Department. Attendance is compulsory, and examinations in the various subjects will be held from time to time. This branch of the San Francisco police, under the direction of the newly appointed Captain of Detectives, Duncan Matheson, promises to make great strides during the coming year.

A. VOLLMER, *Berkeley, Cal.*

University Lectures for Police.—Columbia University made arrangements for a course of fifteen lectures for the members of the New York Police Department in March and April, 1917. Seven of these lectures were devoted to criminal law, five to municipal government and three to criminology. A fee of sixteen dollars was charged to each policeman attending these lectures.

It is doubtful whether a course of university lectures such as this course possesses much practical value for police officers or whether it assists them in the performance of their duties or in their efforts to qualify for promotion. Service instruction for policemen to be of practical value should be planned and carried on by the city itself and should be furnished to the policemen without fee, charge or expense of any kind.

LEONARD FELIX FULD, *New York.*

PROBATION

Probationary System In the U. S. Navy: General Order 110.—"In my last annual report, as Judge Advocate General of the Navy, I dealt at some length with the apparent results following the adoption, during the previous nine months, of the probationary system of punishment commonly referred to in the service as General Order 110. I indicated that, though this system had been in operation too short a time to permit of definite comparison of its results with those obtained under the detention system which it largely replaced, nevertheless it was confidently believed from the data at hand that it would prove an epoch-making step in progressive naval penology. Reports of commanding officers at that time forecast its overwhelming advantages from the viewpoint of economy, discipline, and humanitarianism. Toward the end of the past year, in reply to a circular letter, many suggestions were received as

to minor changes in the system. These were all carefully studied by a board consisting of one officer of high rank from the Bureau of Navigation and another from headquarters of the Marine Corps, both of whom had had practical experience with this system in actual service, and a third officer, detailed from this office, who was familiar with all of the correspondence and recommendations which had been received from the service on the subject. After thorough deliberation General Order 110 was redrafted by this board. This revision, which received the department's approval, was not published until recently, because of the administrative advantage of obtaining data covering one uninterrupted year of operation of the former order, by which we could judge with accuracy the effect of this new system. The revision, which has now been issued, makes few radical changes, the majority of the changes being intended merely to remove petty defects and clarify various points in the old order.

Results of Disciplinary or Detention System.

"In connection with last year's report a special effort was made to obtain accurate data concerning the final results which had been obtained under the detention system. The history of all men who had been transferred to disciplinary barracks was traced and accurate data collected as to the percentages of men who were restored to duty and who 'made good,' that is, those men who were discharged in good standing or who remained in the service in good standing for six months after unconditional restoration to duty. As this data covered several years it indicated accurately the results which were accomplished by the former system.

Results of Probationary System (General Order 110).

"General Order 110 having been in operation throughout the entire fiscal year, the data contained in this report accurately sets forth the results of this system and furnishes data for accurate comparison with the detention system.

'Comparing the results obtained from the reports of last year in regard to the detention system with the results obtained since the inauguration of the probation system, and remembering that approximately the same class of offenders are now placed on probation under suspended sentences that were formerly confined in disciplinary barracks, we have the following figures:

	Successful.	Unsuccessful.
Former detentioners restored to duty.....	32.4 per cent	67.6 per cent
Probationers under General Order No. 110....	34.56 per cent	65.44 per cent

"The above statement shows that a somewhat larger percentage of probationers under General Order 110 have 'made good' than was the case with former detentioners who were restored to duty. This means that under the present system the percentage of men who eventually 'made good' is somewhat greater than was formerly the case when this same general class of offenders were sent to the disciplinary barracks and subsequently restored to duty after a term of non-productive confinement. The result of this has been a steady further decrease in the number of naval prisoners, in the number of naval prisons, in the number of prison guards, and in the consequent expenses for this feature of naval administration. All of the above results would be vain and fruitless had they been obtained at the expense of discipline. It is therefore pertinent to examine that feature through the eyes of the commanding officers who have reported thereon. The effect of General Order 110 upon the discipline

of the service was clearly set forth in last year's report, which stated, in referring to the 125 replies of commanding officers concerning the effects of this order upon discipline:

"As a final summary of these letters received to date, it may be stated that every reply from commanding officers of marines expressed the opinion that the order had had a beneficial effect upon discipline, or that it had reduced the offenses of unauthorized absence and drunkenness, several officers furnishing statistics of their commands as a basis for their opinion. Of more than 100 replies from flag officers and commanding officers of vessels only four expressed themselves adversely, while the remainder varied from non-committal replies in the cases of two or three, through various stages from slight commendation to unqualified praise of its beneficial effect. Fully 90 per cent of the letters from commanding officers of vessels contained statements such as 'effect good,' 'most excellent in every respect,' 'absence over leave reduced to practically nothing,' 'most excellent; will go a long way toward stopping absence over leave,' 'effect very desirable,' 'excellent,' and 'has done much good.' It is fair to state that the younger commanding officers appear most enthusiastic, while from the captains of battleships three adverse and three non-committal replies were received."

"The general improvement in discipline, which, in a measure, is due to the operation of General Order 110, will be seen from the following table. The term 'premature discharge' includes men whose connection with the service was severed under such circumstances as to preclude their being allowed to re-enlist; i. e., such as 'ordinary discharges, not recommended for re-enlistment,' 'discharged as undesirable, for inaptitude, or by medical survey as unfit for the service, etc.:

	—Navy.—		—Marines.—	
	1916	1915	1916	1915
Discharged in honorable status at expiration of enlistment	10,284	8,714	1,860	1,582
Discharged as undesirable for inaptitude or with ordinary discharge not recommended for re-enlistment	756	1,075	161	339
Discharged with dishonorable discharge.....	1,000	1,033	187	192
Discharged with bad conduct discharge.....	2,296	2,728	487	762
Total number prematurely discharged.....	4,052	4,836	835	1,293
Excess of premature discharges occurring in 1915 over 1916		784		458
Total deserters for fiscal year.....	1,681	1,730	659	891
Total number of men handled during fiscal year..	72,885	71,511	13,887	13,953

"From the foregoing it will be observed that though 1,308 more men were handled during 1916 than during the previous year, there has been a decrease of a total of 1,251 'premature discharges,' viz., 784 navy and 458 marines, this decrease in spite of the abnormal demand for labor and corresponding inducements for enlisted men to seek lucrative employment in civil life. There has been a decrease of 1.4 per cent of desertion in the Marine Corps and 0.46 per cent in the Navy, and an increase of 1,848 (or 18 per cent) of men discharged in an honorable status as compared with the previous year.

"The records show that in April, 1914, shortly before General Order 110 became effective, there were 1,835 naval prisoners of all classes; at the present date there are only 620, making a reduction of 1,215 in the number of naval prisoners.

"Since April, 1914, the following penal institutions have been closed: Naval Prison, Navy Yard, Boston, Mass.; U. S. S. *Philadelphia*, and U. S. S. *Topeka*, which have been wholly abandoned as prison ships and returned to other duty in the Navy; and the disciplinary barracks, Port Royal, S. C., and Puget Sound, Wash.

"The only naval prisons remaining in operation are: The Naval Prison, Portsmouth, N. H.; the Naval Prison, Mare Island, Cal., and the U. S. S. *Southery*, as a detention ship, at Portsmouth, N. H.; the Naval Prison, Cavite, P. I., being used as a clearing house for prisoners tried on the Asiatic station. The *Southery* is used as a detention barracks for about 60 offenders whose sentences have been mitigated to detention and as a segregation camp for prisoners before they are transferred to the prison ashore; also a limited number of prisoners are kept on board for the performance of certain work under the direction of the commanding officer. However, the use of the *Southery* could and should be dispensed with in so far as her services are required for this work, such use of her being made for this purpose solely because she is also employed as a receiving ship at the Navy Yard, Portsmouth, N. H. If the department should deem it advisable to dispense with the services of the *Southery* as the receiving ship, I deem it highly desirable and advisable and do so recommend that the prisoners now confined on her be transferred to the prison ashore, wherein there are ample facilities for their accommodation at a reduced cost both in actual expenses and in the number of guards required; the detentioners at present under instruction and observation could be either restored to duty unconditionally on probation or discharged in accordance with the terms of their sentences as their records, etc., appear to warrant. Henceforth naval prisoners who appear to be desirous of rehabilitating themselves and who have completed a portion of their sentence in the naval prisons could either be restored to duty unconditionally or on probation subject to the provisions of General Order 110.

"The abolishment of the detention system on the *Southery* would result in the saving of several thousand dollars annually, and it is believed that the same results would obtain from the handling of the present population of the *Southery* as outlined above.

"In addition to the above, a small number of naval prisoners are confined at the Navy Yards at Norfolk, Philadelphia, and Puget Sound, and at the Marine Recruit Depot at Port Royal, S. C. These are not naval prisoners, but a limited number of prisoners are kept at these stations and cared for and guarded by the regular marine guard for the benefit of the police duty that they perform.

"In regard to the saving in expense: The prison account for the fiscal year 1913 showed an expenditure of \$1,190,514.39; in 1914, \$822,923.03; in 1915, \$643,461.34; and the account for the fiscal year 1916, while not completed, is sufficiently so to show that the cost of prisons under the present system of discipline is at the present time at the rate of approximately \$350,000 per year, and this could immediately be further reduced to \$300,000 per year if the detention system on the *Southerly* be abolished and that vessel be returned to such general service as she may be best fitted to perform. (The actual cost for the fiscal year 1916 will be in excess of this because during a portion of that year it was necessary to maintain the disciplinary barracks at Port Royal and the U. S. S.

Philadelphia, the combined annual expense of which was approximately \$250,000.) A monetary saving of \$850,000 per year is thus shown for the system, besides certain other expenses which are saved, but which do not appear, such as transportation for prisoners and guards between stations, unusual medical treatment, etc. The marine guard at prisons has been reduced from 23 officers and 849 men in 1913, to 7 officers and 326 men in 1916.

"If the above-mentioned reductions in prisons and expenses had been affected at a sacrifice to the discipline of the service I would most certainly feel that they were not of value. However, in view of the almost unanimous verdict of the service, as well as the data in regard to desertions, discharges, etc., as set forth above, that the system of probation under suspended sentence has resulted in improving discipline, I point with pride to the above enumerated results accomplished by this reform."—From the Report of the Judge Advocate General of the Navy, Year 1916.

MISCELLANEOUS

Organization of the Public Welfare Department in Illinois.—An almost revolutionary change has been made this year in the administrative machinery of Illinois.

The readers of this Journal are interested in what has taken place in the charitable and penal institutions. Eight years ago the General Assembly abolished the local boards of trustees and created a central board to have administrative authority over all the institutions in what was known as the charitable group. The State Charities Commission was created at the same time to exercise supervisory and advisory functions in the institutions managed by the Board of Administration. This form of administration has been in operation with great benefit to the institutions and to the public ever since.

The penal institutions, three in number, remained under the control and management of separate boards of trustees.

Centralization was one of the keynotes of the last political campaign in Illinois. Both parties were pledged to a reorganization of the departments after the lines laid down by the Efficiency and Economy Committee, which had devoted four years to an intensive study of the departments of state government. One of the first duties undertaken by Governor Lowden after his election was the drafting of a comprehensive bill to meet the pledges which he had made during the campaign. This bill was accepted by the Legislature almost without a dissenting vote.

It was found advisable to confine the reorganization and consolidation scheme to those departments which were under the jurisdiction of the governor. There were some 120 boards and commissions carrying on this work, all subject to the control of the governor. No effort was made to change or amend the laws which these boards and commissions were charged with carrying out, but the idea was to simplify the form of administration. These various functions were therefore grouped into nine departments, each with a director in charge. These nine directors form a cabinet to the governor. How this scheme was worked out in detail is not of concern here except as to the Department of Public Welfare.

Into this department have been grouped all that were included under the Board of Administration, the State Charities Commission, the trustees of the

three penal institutions and the Board of Pardons and Parole. All these have been abolished and in their place has been set up a department consisting of the following appointive officials:

Director of Public Welfare.

Assistant Director of Public Welfare.

Superintendent of Charities.

Superintendent of Prisons.

Superintendent of Pardons and Paroles.

Fiscal Supervisor.

Criminologist.

Alienist.

The director is supreme in all matters coming under the jurisdiction of these subordinates. He reports direct to the governor. There can be no division of authority or responsibility. The subordinate officials report to the director. He approves or disapproves.

The Superintendent of Charities will have general management of the 21 institutions in the charitable group, the Bureau of Visitation of Children and the Bureau of Instruction of Adult Blind.

The Superintendent of Prisons will exercise similar jurisdiction over the three penal institutions, but in addition will sit as an advisor with the Superintendent of Pardons and Paroles in carrying out the parole law and in hearing petitions for pardons.

The Superintendent of Pardons and Paroles will carry out the parole and pardon laws, which have not been changed except that this one official takes the place of the three members of the Board of Pardons.

The Fiscal Supervisor, as his title indicates, will have charge of the book-keeping, statistical and accounting systems of all the institutions.

The Criminologist and the Alienist will be advisory officers; the first to the Superintendent of Prisons and the Superintendent of Pardons and Paroles, the second to the Superintendent of Charities and through him to the director.

The law does not fix the qualifications or the duties of any of the officials it creates. The director fixes them.

What qualifications the Criminologist and Alienist shall have were also left to the department to determine and it has been found advisable, in view of all the work which it is desirable to do, that both of these men shall have the same general qualifications, education and experience, with this exception, that the Criminologist shall have specialized along the lines of crime, while the Alienist shall have devoted himself to the insane and feeble-minded.

Consequently the Alienist and Criminologist are doctors of medicine, graduates of recognized schools, specially trained in psychiatry. They are also psychologists and have had experience in institutions for mental diseases, both as administrators and as scientific men. Dr. Edward Singer, superintendent of the State Hospital at Kankakee, has been appointed State Alienist, and Dr. Herman Adler, of the Cook County Juvenile Court, State Criminologist.

Governor Lowden informed all the directors that he would appoint none of their subordinates without their full sanction. On the contrary, he asked the directors to recommend to him the men who would be satisfactory to them in these positions. This has been particularly true in the Department of Public Welfare.

For Director, Mr. Charles H. Thorne, of Chicago, was chosen by the governor. Mr. Thorne had been head of Montgomery Ward & Company, but had retired from its active affairs.

For Superintendent of Charities, Mr. A. L. Bowen was selected. Mr. Bowen had been for seven years executive secretary of the State Charities Commission. For Fiscal Supervisor, Mr. Frank D. Whipp was named. Mr. Whipp has been the Fiscal Supervisor of the Board of Administration since its creation and prior to that time was in the fiscal department of the Board of Charities for many years.

The State Charities Commission is abolished in name only. It is now known as the Board of Public Welfare Commissioners and will carry on the same work of supervision and inspection.

The Department of Public Welfare will not do the buying or the building for the various institutions under its charge. The Department of Public Works will build all buildings and purchase all supplies, but the Department of Public Welfare will have the right to make the specifications and requisitions and to pass on the supplies and the work before payment is made.

Many overlapping activities disappear in the new organization. It will save thousands of dollars in salaries and wages, traveling expenses, office supplies and the like, and without doubt will perform the work in a more efficient manner.

This is the first experiment on so large a scale of the one-man power in the administration of public institutions from which politics have been eliminated and into which it has been sought to place men on the sole basis of merit and experience.

(The above account is practically identical with the statement in the *Institution Quarterly*, Vol. VIII, No. 2.

REVIEWS AND CRITICISMS

MENTAL CONFLICTS AND MISCONDUCT. By *William Healy*. Little, Brown & Company, Boston, 1917. Pages XI+330.

"Innate cussedness" is no longer a satisfactory explanation of conduct abnormalities. Dr. Healy has clearly shown, in his latest book, the importance of investigating the deciding factors in a career of delinquency. "A remarkable, dynamic quality characterizing certain hidden mental reactions to experiences is responsible in some individuals for the production of misconduct, or, indeed, whole careers of delinquency." It is the problem of this book to set forth the nature of this most important mechanism of mental life.

The theory underlying the discussion is that all actions are determined by previous experience. It is not necessary that the experience be remembered. In many cases the subject may be unconscious of the factors determining his behavior. The most important elements may have been repressed, and for many days may not have reached the conscious level. The chief problem in work with those whose conduct is abnormal, is to bring to the light of clear consciousness the details of emotional conflicts, which, in spite of "being out of sight, exert an influence."

It is essential to realize that conduct is determined by definite, even though not easily ascertainable factors. When we arrive at the point of view that all actions are determined, it is reasonable to consider the possibility of reformation through the introduction of new experiences. Aroused largely by unchanged environment as the author truly remarks, thoughts or impulses once held may very likely crop up in mind again, through the active forces of memory and of association and habit formation. These are the suggestions coming from various features of living conditions in an old neighborhood, from an achieved reputation, from old associates in delinquency, or from companions known while under detention. Even the family attitude toward the offender may result in the continuance of the delinquency. In work with various cases, all these adventitious forces have been observed at work and, where no change of environment has been effected, the continuance of the tendency to offense has seemed inevitable.

The discovery of the "mental conflict" or the emotional disturbance which is the cause of the abnormal conduct is the essential prerequisite of treatment. Healy says the general method of psychological investigation considered in this book has usually been called psychoanalysis. The psychoanalytic procedure is, however, more complex and requires a finer technique than is desirable or necessary for the solution of problems of misconduct. For this purpose a simpler procedure is sufficient, and in order to avoid any misunderstanding, the procedure is designated *mental analysis*, that is, "the method of using the memory to penetrate into the former experiences of mental life."

In making the analysis it was not long before the author was "forced to the conclusion that information such as might be obtained by mental testing, physical examination, by learning the main points

of developmental and family history, and by inquiring into the companionship, or other environmental conditions, was absolutely insufficient to explain the essentials of the development of a marked tendency to delinquency in certain cases. Certain elements of innate mental life had to be sought out and invoked for explanation, even if practical issues alone were in view."

An "interview" might be a good term to summarize the method of mental analysis. "Then, perhaps, nothing so frequently taps the source of trouble as sympathetic questioning about worries, and persistently recurring images or ideas. The simple asking, 'What is it that bothers you? or, Do you worry about anything?' is often sufficient to bring out facts which brightly illuminate further progress of analysis." In making these investigations certain difficulties must be faced, and certain problems solved. In the chapter on "Methods" much valuable information is given for the guidance of the analysts.

While the method is not absolutely proscribed for any type of case, there are subjects for whom it is not desirable. "Rarely to be benefitted by mental analysis are adolescent girls showing hypersexual tendencies, even though mental conflict plays a part in the case, they are properly subjects for educational discipline and environmental control."

Since it is the memory that is being used, the more recent the memories the more satisfactory will be the results. In adults, mental conflicts are not so likely to develop and the fruitful field of effort is with younger rather than with older subjects. It is also true that the lower the intelligence the less is the probability of accurate reproduction. We may, therefore, be sure that "the promise of practical returns from the use of mental analysis in cases of misconduct, caused by mental conflict, is much greater with the more intelligent."

In chapters 5 to 16 inclusive, constituting two-thirds of the book, cases of mental conflict are discussed. While the presentation of these cases is extremely valuable, it seems to the reviewer that direct causal connection has not been established between the mental conflicts discussed and the abnormal conduct. In many cases the mental conflict is concerned with sex affairs. The abnormality of conduct is usually taking what does not belong to oneself. The interpretation that the stealing is due to disturbing thoughts about sex relationship or sex practices seems a trifle insecure. It would be desirable to know in how many cases there have been similar conflicts in reference to sex matters where no deviation from the accepted standards of social reaction is noticed.

A demonstration of a causal relation between certain experiences and certain types of reaction would be an exceedingly important contribution to the solution of the problem of delinquency. It would then be possible to outline corrective or re-educational measures. Even though it is not clearly shown in this work that the conflicts discussed do stand in causal relationship to the delinquency, the book is a most important contribution. When judges, probation officers, psychologists and medicopsychologists, realize that all actions may be explained in

terms of previous experiences, it is undoubtedly true that we shall have a rapid reformation in our methods of dealing with delinquency. Dr. Healy is to be congratulated on the strong presentation of this point of view.

Municipal Court of Philadelphia, Pa.

DAVID MITCHELL.

SOME CRITERIA FOR THE EVALUATION OF MENTAL TESTS AND TEST SERIES. By *Florence Mateer*, Ph. D. *Mental Hygiene*, April, 1917. Pp. 241-51.

Ten years ago no mental tests were attracting attention, but Binet was developing his series. Their use, at first cautious, rapidly grew extensive, while all handicaps were ignored. Then followed criticisms and constructive attempts at standardization. Goddard's contribution is valuable, as he shows the percentages of children at the various chronological ages as well as at the various mental ages who do the same question, thus giving a two-plane distribution which checks itself. The weakness of the Binet tests is their lack of distinction between defect and disease. We must not diagnose as defective those testing a certain amount below chronological age; the quality of response and corroboration must be relied upon. Also, we must not designate a definite percentage of a group as defective, and try to find tests that discriminate that many, as suggested by Pinter and Paterson. All feeble-mindedness cannot be detected in early childhood. Today's tests are of differential diagnosis, not prognosis.

We dare not depend on any one test series for the detection of the defective unless more varied and comprehensive than those of the present day, because the mental defective is not he who lacks one attribute, but is lacking in so many ways that he cannot make shift in an emergency even though he use all the ability he has. Sticking to any one procedure causes prejudice which leads to a personalized revaluing of all other data which are approved or discarded according to their correlation with the data dug out by the pet tool.

One of the first essentials for advance in mental testing is a standardization of examiners; even such a rating as easy, hard, variable, or exact would be better than nothing. Test standardizations should be based on empirical data rather than statistical theories. Unselected groups and community surveys would be a good basis of study. The individual tests should be evaluated. The defectives should be known as far as possible from some other diagnosis. Failure to pass the tests of society, together with educational acquisitions not up to what the person has had the chance to get, is good corroborative evidence of mental defect. Mental test findings must correlate highly with such evidence.

A Gaussian curve of distribution is not sufficient proof of the diagnostic value of a test; it must have a mode indicating normality. The matter is too complex for a single test series. A great number of distributions must be used. He who is below in a sufficient number

is defective. This number should be determined by a statistical survey of all cases. The borderline case will be more easily diagnosed, the greater the number of tests. Another factor aiding in evaluation of tests will be a more liberal use of correlation coefficients and the resultant correction of opinions drawn from distribution curves alone.

When sufficient data have been assembled to give a coherent and complete picture of brain activity, then and only then, is diagnosis allowable.

Evanston, Ill.

ELIZABETH PETTY SHAW.

THE PSYCHOLOGY OF SPECIAL ABILITIES AND DISABILITIES. By *Augusta F. Bronner*. Little, Brown & Company, Boston, 1917. Pp VI+269.

Besides the preface, and an appendix which contains statements on the results of certain psychological tests, there are ten chapters in this book. The first chapter is a statement of the problem, "That human beings have particular abilities and disabilities varying more or less—and frequently varying greatly—from the level or normal capacity, is a fact of much psychological interest as well as of great practical educational and social significance." Efforts have usually been made to determine positive correlations between different mental traits, but these correlations are far from unity correlations, and superiority in one trait may be, and often is, accompanied by actual incapacity or specialized defect in another. The question, in reference to those with specialized abilities and disabilities, is different from that of the feeble-minded, i. e., of those who are definitely of the institutional type. In case of those with special defect, or ability, the problem is not segregation, but rather adjustment to the social organism.

The chapter on "Methods of Diagnosis" is, to a large extent, a discussion of many individual tests which may be used in a psychological examination. From the standpoint of social behavior, perhaps the most important statement in the chapter is the following: "The situations which in real life call the emotions into play are not easily duplicated in the laboratory, and artificial stimuli for arousing them necessarily would result in totally different reactions. How can one study experimentally love and hate as they affect behavior? Or what can tests reveal concerning the formation and results of anti-social grudges? Judgment as to defects in emotional life, as well as in regard to will, must be based very largely, if not altogether, upon the individual's social reactions."

Chapter 3 on "Differential Diagnosis" indicates some cases for which one must be on the lookout. The possibility of confusing epileptic deterioration, the phenomena of hysteria, or the irregular mental functioning of chorea, with other types of mental abnormalities, is clearly outlined. Two statements in the chapter are probably open to considerable question. The first one is, "Sometimes mental dullness caused by excessive use of *tea* or *coffee*, or by *smoking* indulged in to an extreme degree, exhibits itself in a form which makes observers

suspicious of specialized defect." The second one is, "To distinguish between the normal individual with special disability and the defective with special ability should not present a very difficult problem in the light of all that we have already said." The latter statement is liable to lead to considerable misunderstanding. Even though one has the training, which the writer of the discussion has had, it is not always an easy task to decide this question. The layman reading the discussion is liable to make interpretations which the writer probably did not wish to suggest.

"Some Present Educational Tendencies," is the title of Chapter 4. School investigators have, to a large extent, dealt with the system as a whole, rather than with the pupils in the system. The individual concerned has had little consideration: "But since one salient characteristic of the mental life is individual differences, this certainly should affect the theory of education on the one hand and practical procedure on the other."

In order to have as efficient an administration of the schools, as there is of the ordinary commercial establishment, much more consideration must be given to the result in the case of each pupil.

Chapters 5 to 8 inclusive include discussions of various types of special disabilities, presenting cases which illustrate the type of defect. The first question is of special defect in number work, the second is of defect in language. In reference to these, cases of word blindness, and word deafness are discussed, and the number of cases are presented in which these factors are possible explanations for the social mal-adjustment.

Chapter 7 discusses "Special Defects in Separate Mental Processes." Memory, inner visual functions, and perceptual abilities are included in the discussion.

The 8th Chapter is the discussion of "Defective Mental Control." "A moment's reflection should convince anyone that special defect in control of actions is a phenomenon no more peculiar than is disability of any other type. The power to awaken inhibiting ideas and to keep such thoughts in the foreground of consciousness so that they may become effective is a power as truly characteristic of mental life as is the capacity for recalling past experience or for performing any other mental function." A number of cases, well worth perusal, are presented.

Chapter 9 discusses special ability in cases where there is general subnormal mentality. The special abilities are with number work, with language, and with concrete material and rote memories. Occasionally some of these special abilities have a distinct economic value, and it is desirable to determine their presence in order to prescribe the best treatment for the subject.

The final chapter is on "General Conclusions." "It is not the author's purpose to offer any specific devices guaranteed to overcome defects, or to develop abilities. Since each individual problem-case would seem to require intelligent consideration on the basis of all data that can be gathered concerning it, it naturally follows that no general

formulæ for treatment can be given, no dogmatic statements made in regard to general constructive measures."

Such a discussion as is presented in this book, points to a much more satisfactory solution of the problem of abnormal conduct than we have usually supposed possible. In line with other publications from the psychopathic institute, this book emphasizes the fact that there are definite, if with difficulty ascertainable, reasons for the conduct of an individual. In other words, behavior is not something determined by an individual *willing* to do wrong, or *willing* to do right, but behavior is determined by the kind of organism with which an individual starts out in life, and by the experience which he has had.

Municipal Court of Philadelphia.

DAVID MITCHELL.

PSYCHIATRIC FAMILY STUDIES. By *A. Myerson, M. D.* American Journal of Insanity, Vol LXXIII, No. 3, January, 1917.

This paper presents (1) a review of the literature on the treatment of the psychoses and the family studies done by other workers; (2) rearrangement and criticism of Koller and Dien's work on the heredity of the insane and non-insane; (3) marriage rate of the four groups of insane as shown by the Taunton (Mass.) State Hospital statistics; (4) "anticipating and antedating" as shown by the work of Mott and others and by Taunton figures; (5) the analysis of individual families from the records of the Taunton State Hospital. The author has three objections to the Mendelian laws as at present applied to psychopathic heredity: (1) "It is assumed that the neuropathic differs from the normal by the lack of some normal determiner. There is evidence adduced for this point of view and it is just as possible that a diseased determiner or even a new one is at work." (2) "The laws of Mendel have not been shown to apply for any single normal human character of simple type, except perhaps, eye color. To assume then that the vast range of the psychoses (the feeble-minded, the epileptic, character anomaly, criminality, and neuroses) is related to a unit determiner, or group of determiners acting as a unit is, to say the least, premature." (3) "There is a question in my mind whether a true Mendelism has been followed. The dominant characters of Mendel appear in a first generation through the mixing of two stocks, and in the second and later generations the proportion of recessive and dominant appears through the inbreeding of the first generation; that is to say, what would correspond to the mating of brothers and sisters in human relationships. No such conditions prevail in mankind and expectation of ratios and proportions seems to be futile."

In regard to the marriage rate of the insane, Myerson finds (1) "the males in the alcoholic, parietic and dementia praecox groups marry less than do the females. In the seniles, though the percentage of married men is greater, the totals of those who have entered conjugal relations at one time or another are about equal."

In regard to the statistics of the cases treated at the Taunton State Hospital, Myerson says the following: "There had been at the time that this part of the work was completed, in January, 1916, 22,300 admissions to Taunton State Hospital since its founding in 1854. From a rough calculation made by analyzing 3,000 cases taken at various points in the history of the hospital it seems that about 16,000 persons are represented in the 22,300 commitments. Of the 13,000 people in the hospital at that time, roughly ten per cent were related to one another. Of the patients that had been in the hospital from 1854 to 1916 there were 1,547 who were related to one another, and these represented 663 families."

"The mother-son relationship is much less frequent than the mother-daughter (as 55 is to 80), but the father-son relationship is only slightly less common than the father-daughter (as 55 to 59), and represents a difference more likely to be accidental."

In part five are discussed at length ninety-eight family groups. The author sets himself the following problem: "Given a certain type of mental disease in an ancestor, what form of mental disease is to be expected in his direct insane descendant?"

Answering this question, the result of this family study is as follows: From a paranoid psychosis in the immediate ancestor, dementia praecox or a paranoid condition results. Dementia praecox in the ancestor produces dementia praecox in the descendant. Cases of maniac depressive insanity show either the same psychosis or dementia praecox.

The study is made on material collected at the Taunton State Hospital, first by Dr. Charles C. McGaffin, former pathologist, and then by the author, Dr. A. Myerson, present chemical director and pathologist. All the records of the hospital were analyzed and supplemented by information obtained by field workers in regard to patients and their families after discharge.

This is a very interesting and suggestive study and a very good example of what may be done with state hospital records which so often are not available for any scientific purpose. The author is wisely conservative in his deductions, since, as he points out, institution records are unsatisfactory as material on the basis of which one may answer some of the urgent problems confronting the psychiatrist, such as the question of the relation of genius to insanity, the problem of the psychoneuroses, criminalism and similar problems. Of course, it is obvious that in order to obtain any satisfactory conclusion in regard to such questions a great deal more information must be obtained regarding the uncommitted members of these families than it is possible to obtain from these records. This study, however, should encourage the hospital official not only in continuing to keep careful and detailed records, but in enlarging their scope and above all in following a good system of cross reference, such as that instituted at the Danvers State Hospital in Massachusetts, by the former superintendent, Charles Whitney Page. This work is a pointed answer

to the question so frequently asked by the lay officials as to the value of psychiatric records in state hospitals.

Chicago.

HERMAN M. ADLER.

Feeble-mindedness as seen in court. By *V. V. Anderson*, M. D. *Mental Hygiene*, April, 1917. Pp. 260-65.

The feeble-minded formed a nucleus of the recidivists. Examination shows that 25-40% of the group are feeble-minded. Of a group of 1,000 troublesome offenders, Anderson found 36% feeble-minded. This was a selected group, hence the proportion is quite high. Not more than 10% of all criminals are feeble-minded, yet this 10% is the very backbone of recidivism. An intensive study of a group of 100 feeble-minded individuals taken without selection from court files gives the following data: All showed sufficient deviation in childhood to have made their detection possible; 73% did not get beyond the fifth grade in school; 75% were not self-supporting after leaving school. They were equally incapable of conforming to the standards of conduct of their communities, as shown by the fact that the average number of arrests apiece was 18.25. Both probation and penal treatment were tried by the court. The group was placed on probation 432 times, 220 times surrendered, and 118 inside probations. They were given 735 penal sentences, of 106 years total, and 250 indeterminate sentences. An adequate explanation of all this maladjustment is found in the fact that 75% were below the mental level of ten-year-old children. There has been untold economic waste in not recognizing in early childhood the feeble-mindedness of these individuals, who should have been protected from their own weakness and who would have been made happy and useful in a limited environment created for their special needs. The community has acted unintelligently in failing to interpret correctly the condition of these weaker members.

Evanston, Ill.

ELIZABETH PETTY SHAW.

Journal of the American Institute of Criminal Law and Criminology

Official Organ of the American Institute of Criminal Law and Criminology; of the American Prison Association; and of the American Society of Military Law.

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CONTENTS

EDITORIALS.

- Annual Meeting of the American Institute of Criminal Law and Criminology—Vital Statistics—Compulsory Citizenship Training 482

CONTRIBUTED ARTICLES:

1. Indeterminate Sentence, Release on Parole and Pardon (Report of the Committee of the Institute).....
.....Edward Lindsey, Chairman 491

CONTENTS—Continued

2. Sterilization of Criminals (Report of Committee "F" of the Institute).....*William A. White*, Chairman 499
 3. Drugs and Crime (Reports of Committee "G" of the Institute).....*Francis Fisher Kane*, Chairman 502
 4. A Digest of Laws Establishing Reformatories for Women in the United States.....*Helen Worthington Rogers* 518
 5. The New York "Public Defender"...*William Dean Embree* 554
 6. The Most Effective Methods of Dealing with Cases of Desertion and Non-Support.....*William H. Baldwin* 564
 7. The Joliet Prison and the Riots of June 5th...*A. L. Bowen* 576
- JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE 586

NOTES AND ABSTRACTS:

Intelligence Testing and Testimony (594)—Act Establishing the Connecticut State Farm for Women (595)—Fourth Tentative Draft of Act Reported by the Committee on Vital and Penal Statistics (599)—Report of Woman's Court, City and County of San Francisco (612)—Report of the Work of the Central Howard Association for April, May, and June, 1917 (613)—Ryan Dactyloplane (615)—Report on Baltimore Police (615)—Annual Report of New York District Attorney (615)—Finger Prints (615)—First Annual Report of the Juvenile and Domestic Relations Court of Richmond, Va. (615)—Juvenile Court of the Parish of New Orleans (618)—Annual Report of the Juvenile Court and Juvenile Detention Home, Cook County, Illinois (618)—Report of the Juvenile Court of St. Louis, Mo. (619)—Semi-Annual Report of Adult Department in San Francisco from January 1 to June 30, 1917 (621)—Report of Adult Probation Department of San Francisco, for the Month of August, 1917 (622)—N. Y. Civil Service Examination for Promotion to Chief Probation Officer, Court of Special Sessions (February 15, 1917) (622)—Civil Service Examination for Promotion to Deputy Chief Probation Officer (July 17, 1917) (624)—National Chamber of Commerce Committee's Plan for Relief of Persons Dependent Upon Soldiers and Sailors (625)—Imprisonment before Trial is a Big Handicap (627)—Mercy and Justice (627).

REVIEWS AND CRITICISMS:

Criminal Sociology, By *Enrico Ferri* (629)—The Development of Intelligence in Children, By *Binet* and *Simon* (635)—Social Diagnosis, By *Mary E. Richmond* (636)—Mental Aspects of Delinquency, By *Truman Lee Kelley* (637).

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THE AMERICAN PRISON ASSOCIATION WILL HOLD ITS NEXT ANNUAL MEETING IN NEW ORLEANS, NOVEMBER 19-23. HEAD-QUARTERS, 407 AUDUBON BUILDING. FOR PROGRAM ADDRESS THE SECRETARY, JOSEPH P. BYERS, EMPIRE BUILDING, PHILADELPHIA, PA.

EDITORIALS

ANNUAL MEETING OF THE AMERICAN INSTITUTE OF CRIMINAL LAW AND CRIMINOLOGY.

The ninth annual meeting of the American Institute of Criminal Law and Criminology was held at Town Hall, Saratoga Springs, on September 3rd and 4th, 1917.

The committee reports will be published in the Journal. There is not space for all of them in the present number, and, furthermore, the transcript of general discussion has been received so late as to make it necessary to postpone to the next number publication of some of the reports. The report of the secretary showed an increase of 19 in the membership of the Institute since the last meeting.

Mr. Herbert C. Parsons of Boston read the report of the Committee on "Probation and Suspended Sentence." A minority report has been sent in by Mr. Arthur Towne of Brooklyn.

Francis Fisher Kane, Esq., of Philadelphia presented the report of the Committee on "Drugs and Crime." A brief discussion followed, which was participated in by Mr. John L. Whitman, Superintendent of Prisons for the State of Illinois, and others.

On the evening of September third, Mr. Thomas Mott Osborne delivered an address before a large and interested audience on "Common Sense in Prison Management." He illustrated his talk by recounting personal experiences with rejuvenated prisoners.

The report of Miss Kate Claghorn of New York on "Crime and Immigration" is a valuable document and unique in its class. It was presented by Dr. Bernard Glueck, Director of the Psychopathic Laboratory in Sing Sing Prison and was discussed by Dr. Glueck, Mr. Robert Ferrari of New York and others.

Dr. William A. White, Superintendent of the Government Hospital for the Insane at Washington, D. C., reported for the Committee on "Sterilization of Criminals." Dr. William T. Belfield of Chicago presented a minority report. This committee, on its request, was discharged from further consideration of the subject.

Reports were presented by Maj. John H. Wigmore for the Committee on Translation of European Treatises; by Prof. Robert H. Gault for the Committee on Publications and for the Editorial Staff of the Journal; by W. O. Hart of New Orleans on Co-operation With

Other Societies, and by Mr. Frederic B. Crossley of Northwestern University on the Business Management of the Journal. His report showed a deficit of something more than \$1,400 due to the falling off of European subscriptions and the rise in the cost of materials and labor. His recommendations for meeting this situation were referred to the Executive Board, which is now taking steps to meet the difficulty. Abstracts of these reports will be published in our next number.

Before adjournment Mr. James Bronson Reynolds of New York City brought forward for discussion the subject of the Public Defender. In the course of his talk he presented the substance of the first quarterly report of the Voluntary Defender's Committee of New York City. This report may be found elsewhere in this number under the title, "The New York Public Defender."

Resolutions were passed pledging loyalty to the President of the United States during the continuation of the war, and urging at its conclusion the establishment of a League of Nations "to secure an enduring peace."

The following officers were then elected for 1917-1918:

President, George W. Kirchwey, New York, Assistant Superintendent of Prisons of the State of New York and former Dean of Columbia University Law School.

Vice-Presidents, James Bronson Reynolds, New York; Edward Lindsey, Warren, Pa.

Secretary, Edwin M. Abbott, Philadelphia.

Treasurer, Bronson Winthrop, New York.

Executive Committee (to serve to 1920): Franklin Chase Hoyt, Chief Justice of the Children's Court, New York City; Dr. Thomas W. Salmon, Medical Director of the National Committee on Mental Hygiene, New York; Herman H. Adler, State Criminologist, Chicago, Ill.

President Kirchwey, on taking the chair, said in part:

"I have a vision of an American Institute of Criminal Law and Criminology which shall greatly enlarge the usefulness—the very marked usefulness—of the society in the past. I think we may easily count on a very much wider popular support than we have had. I think we may reasonably hope for very much greater financial support than we have heretofore enjoyed. I feel that we may, perhaps, by close co-operation, by taking counsel together and then working together, secure an amount of—what shall I say?—continuous action from the Institute, which it has scarcely had heretofore. I have a vision of a permanent bureau with a director giving all his time to the work of the Institute and who, with others who may be associated

with him, may engage in indispensable research work, upon which the future progress of our cause so largely depends; a bureau in which that work may be carried on in a good many different directions continuously; in which the committees of the Institute shall be aided and inspired to carry on their work so that no year in the history of any committee shall be without some productive result, so that we may, year by year, as we go on, constantly enlarge our boundaries of knowledge with respect to criminal law and criminology, and in connection with it, perhaps, conduct a propaganda in which the results of our accumulating wisdom, if I may so describe it, may be put at the service of communities that desire to better their conditions in this country and abroad, so that we may come really to do what we have been in an intensified degree and on a much larger scale, with a marked influence for the promotion of better conditions both in penology and in dealing with crime in its incipient stages.

"It is a large program that I am outlining and I may pledge, I am sure, not only for myself, but for my colleagues, a real determined, continual effort, during the coming year, to place the Institute upon permanent foundations of usefulness, and to enlarge and carry on the work to the best of our ability. At any rate I pledge myself to that cause, and I have great confidence in the men who have carried on the work of the Institute so long and who have, by their work, shown their faith in the utility of the work which the institute was organized to promote."

Adjournment was then taken sine die.

VITAL STATISTICS.

The committee on Vital and Penal Statistics of the Conference of Commissioners on Uniform State Laws, Nathan William MacChesney, chairman, presented its latest report at the twenty-seventh annual meeting of the Conference at Saratoga Springs, N. Y., on August 31, 1917. With the report the committee transmitted the fourth tentative draft of an act to provide for and make uniform the registration of all births, stillbirths and deaths and to be cited as "Uniform Vital Statistics Act." The draft may be found in this number at page 599. The committee made no report on penal statistics. It recommended that this matter be referred to the committee of the conference on co-operation with the American Institute of Criminal Law and Criminology.

The tentative draft referred to is based upon a so-called Model State Law for the Registration of Births and Deaths drafted by a joint committee of representatives of the American Medical Association, the American Public Health Association, the Bureau of the Census and the Children's Bureau. It creates the office of a State Registrar of Vital Statistics under the State Board of Health. Upon this officer it places squarely the responsibility of securing the registration of all births and deaths. The law divides the state into small primary registration districts; each city, each incorporated town, and each township constitutes a separate registration district, and when these are too large to be covered conveniently by the local registrar, sub-registrars may be appointed by the State Board. It provides compensation to local registrars.

The responsibility for reporting births to the registrar is placed upon the physicians and midwives, or other persons in attendance at the birth. The law provides that they may be prosecuted for failing to perform this duty. The parents of every child should specifically ascertain that the birth of the infant has been duly registered.

The above may seem to be an elaborate scheme for accomplishing this purpose, but nothing short of it will be satisfactory. The following is quoted from Monograph No. 1 of the U. S. Department of Labor, Children's Bureau, Julia C. Lathrop, Chief, "On Birth Registration—an Aid in Protecting the Lives and Rights of Children":

"Birth registration means the record in public archives of the births of children. In the civilized countries of Europe it has long been complete. It is, of course, the first item in Vital Statistics. In the United States birth registration has made progress less rapidly than the other items of a complete system of Vital Statistics, notably death registration and the registration of marriages. While the importance of such statistics has been recognized in certain parts of America from colonial days, the country as a whole is still devoid of uniform and complete records of the births of its citizens. This neglect is undoubtedly to be ascribed to the lack of a proper conviction that such records are dignified and valuable. Everybody agrees that it is dignified and valuable to make public record of marriages and deaths. Only a moment's thought is necessary to show that the public record of births is of kindred importance, and for the same reason to protect individual and property rights.

"Moreover, as a working expedient, it is coming to be regarded as indispensable in the eradication of three great evils which affect the children of the country. There are no more important undertakings at the present day than the reduction of infant mortality, preserva-

tion of the children's right to education, and the abolishing of child labor. In serving all three of these ends, birth registration is an indispensable practical aid."

Adequate Vital Statistics are essential in order properly to safeguard the rights of the youth of the land under the Child Labor Statutes, and in order properly to administer Workmen's Compensation Acts, Occupational Disease Acts, or other legislation having to do with the health of the community. They are essential also to the fair and orderly enforcement of the selective draft law or other general or universal military service laws.

As the result of the agitation promoted largely by the Bureau of the Census and the American Medical Association, assisted informally by this committee, good birth registration laws have been enacted in at least thirty-three states and the District of Columbia, although their enforcement does not yet meet the census requirements. These states are:

Arkansas,	Massachusetts,	North Dakota,
Connecticut,	Michigan,	Ohio,
District of Columbia,	Minnesota,	Pennsylvania,
Florida,	Mississippi,	Rhode Island,
Georgia,	Missouri,	South Carolina,
Idaho,	Montana,	Tennessee,
Illinois,	Nebraska,	Vermont,
Kansas,	New Hampshire,	Virginia,
Kentucky,	New Jersey,	Washington,
Maine,	New York,	Wisconsin,
Maryland,	North Carolina,	Wyoming.

In the following states, either new laws, or important amendments are considered necessary, unless legislation based upon the act herewith presented was passed at legislative sessions of 1917, of which the committee is not aware:

Alabama,	Indiana,	Oklahoma,
Arizona,	Iowa,	Oregon,
California,	Louisiana,	South Dakota,
Colorado,	Nebraska,	Texas,
Delaware,	New Mexico	West Virginia.

The Model State Law referred to necessarily made public the fact of the illegitimacy of children with great resulting hardship to the child and without any adequate compensating benefit to the community. The chairman of this committee has discussed in full the objections to

such provisions in a pamphlet entitled, "Race Development by Legislation," printed by the State Charities Commission of Illinois, in the *Institute Quarterly*, Vol. IV, No. 2, where he quotes Mr. Victor Von Borosini in "The Problem of Illegitimacy in Europe," as found in his article in this *Journal*, Vol. V, at p. 212:

"If the legal birth and baptism certificates could be modified so that by looking them over it would not appear immediately that the person was of illegitimate origin, much unnecessary sorrow, mental anguish and suffering could be avoided. The adopted person carrying the name of the adopting person would start in life without the serious handicap under which bastards suffer, and which frequently results in their moral breakdown, ending often in the penitentiary or in suicide."

The Model State Act then pending was amended in Illinois before passage so as partially to meet this criticism, and it was agreed by Dr. C. St. Clair Drake, the Secretary of the State Board of Health of Illinois, that certain additional amendments would be supported by the Board in order completely to meet this criticism.

The act passed in Illinois, instead of providing for certain specific information, provides that the certificate shall require at least the information required by the Standard Certificates of Births and Deaths prepared by the Bureau of the Census of the United States Department of Commerce and Labor, and fails to protect the secrecy of the return thereby required, but still creates a public record on the question of legitimacy. This situation should be remedied.

The Minnesota Child Welfare Commission, recommended to the legislature certain changes in their law based upon the act submitted with this report, particularly sections 18, 19, 21 and 23 with reference to illegitimate births, which recommendations were enacted into law (See Minnesota Statutes—Chap. 220—Laws of 1917).

The Act attached to this report incorporates certain amendments which fully safeguard against publicity on the part of the mother in the case of an illegitimate child, prevent any use of any such information by way of blackmail against the alleged father, and fully protect the illegitimate child against knowledge or publicity because of the official records upon such fact. Not only so, but it shows the way for uniformity among the states, in which this Conference is particularly interested and statistics collected under this law and tabulated by the United States Census Bureau will give information that can be secured in no other way.

It is true that an orderly and authentic system of records of births and deaths would greatly facilitate medical, legal and judicial

procedure in which certain evidence may be necessary, but the chief benefit will result to the people themselves, and not to any limited profession. It would be of inestimable value to the criminologist and to the student of social problems covering a wide scope.

Owing to the absence of the chairman and other members of the committee from the Saratoga meeting consideration of the report was postponed until the next annual meeting.

ROBERT H. GAULT.

"COMPULSORY CITIZENSHIP TRAINING."

Before the declaration of war by the United States against Germany, Dr. Harold S. Hulbert, who is at present Chief of the Psychiatric Unit at the United States Naval Training Station at Great Lakes, Illinois, published a brief article in the *Proceedings of the United States Naval Institute* (Volume 43, Number 5, Whole Number 171, May 1917), under the above title. The substance of this article is of such fundamental value, in our judgment, from the broad point of view of education and the prevention of delinquency and criminality, that we are constrained to make liberal use of it here.

When the article referred to was being written, and long before that time, in fact, there was considerable discussion about the desirability of compulsory military training. Dr. Hulbert is here making the point that such training presents a great opportunity for the development of citizenship. He proposes the inauguration of plans to survey and instruct all the male population as the young men reach the age of military training.

When a young man presents himself at the recruiting office, he is rejected if he has defective vision, bad tonsils, dental trouble, syphilis, tuberculosis, mental disease, hernia, flat foot, etc. The physically unfit, in these respects, are rejected and as far as the State is concerned, they are lost from sight. Here is a source of waste. Dr. Hulbert proposes that the examination—and let us be reminded that he was writing in a time of peace—be made more thorough than any one man can make it; that it be made more thorough than it is in the army and navy for recruits, or at Ellis Island and similar places for immigrants. Let the young men be brought together when they are about to enlist for their compulsory term of military training and examined in large groups. Let these examinations be made by a corps of specialists, a skilled ophthalmologist to examine each recruit for vision, an internist for tuberculosis, enlarged heart and so on, a dentist, a surgeon for hernia and orthopedic abnormalities, a psychiatrist

for his mental condition, etc. If the recruit is fit from the point of view of these specialists, let him be accepted for his term of military training. If not, let him be referred to some suitable clinic or hospital for treatment with the requirement upon him that after treatment he reappear for examination and that the report of the treatment be forwarded to the officer in charge of the recruiting station. In some cases, treatment might extend over a number of years. In other cases, notably of those of insanity, feeble-mindedness or epilepsy, he would be placed in custody in a suitable institution. "At once," says Dr. Hulbert, "the national efficiency, both for peace and for war, will be greatly increased." Not only will these examinations as proposed be the means of singling out the unfit, but in the course of time and experience they will form the basis for determining the field in which the young man's special ability and capacity would make him of most value. Too many of our young men simply drift into their occupations. They select them neither from choice nor discretion. A little suggestion properly given to the individual would arouse his ambition and help him find the best possible work in civil life later.

But Dr. Hulbert is not interested alone in making a physical and mental survey of all the young men who present themselves for military service. He is equally urgent upon the giving of instruction in the fundamental things which good citizenship implies. Such young men in their training camps can be helped greatly by brief lectures by civilians and government lecturers of appropriate ranks. Talks on thrift, banking and insurance, prevention and cure of tuberculosis and other diseases, the duties and obligations of the voter, on the American forms of government in city, state and nation, on elementary law, on American ideas of democracy and opportunity. All these are subjects which, if properly presented, would contribute to the educational value of the camps maintained for young men under a compulsory service regime. The general knowledge which the men would gain in camp would be brought home by them after the period of service to the benefit of those at home.

One of the good points made in this brief article by Dr. Hulbert is that a program of compulsory military training could find larger support than it now has, or at any rate than it had before the declaration of war, if the camps should be made avenues through which worthy propagandas, such as those for the prevention of tuberculosis, life extension and others, could be directed. It is a scheme that appeals to the imagination. It looks toward the co-ordination of many large movements for the improvement of the health and morals of young men. Many would not support the idea of compulsory military train-

ing for itself alone, while they would support it if linked up with great movements for a safer and greater nation, for better citizenship and individual efficiency.

We can see how this plan if put into operation would make a great educational institution out of a military training camp; how it would facilitate the plan that is ably espoused by Dr. Victor C. Vaughan of the University of Michigan in an article published in this Journal, (Vol. V, No. 5, 688-694), under the title, "Crime and Disease." That plan involves the selection of a full-time health commissioner in each city of twenty thousand or more, and each county of thirty thousand or more, who shall have a sufficient corps of assistants to enable him to make a thorough-going survey of his district as a preliminary to the removal, forcibly if necessary, of all unsanitary conditions. This official also shall discover, examine, and make a record of all members of the community who are in any respect defective, and therefore burdensome to the community—and more than this, set in operation the machinery by which the greatest sources of danger may be eliminated.

The adoption and execution of such an ideal program as this would undoubtedly be facilitated by the operation of Dr. Hulbert's scheme for compulsory military training camps, assuming that the camps themselves, in their own sphere, would prove an important means of education—and of this there can be no reasonable doubt. Not only so, but in due course of time we should find the influence of the camps contributing in turn to the development of a demand for vital statistics of the whole population.

ROBERT H. GAULT.

INDETERMINATE SENTENCE, RELEASE ON PAROLE AND PARDON

(REPORT OF THE COMMITTEE OF THE INSTITUTE.¹)

EDWARD LINDSEY,² *Chairman.*

The only new state to adopt the indeterminate sentence the past year is North Carolina. In that state, by act of March 7, 1917, entitled, "An act to regulate the treatment, handling and work of prisoners," it is provided that all persons convicted of crime in any of the courts of the state whose sentence shall be for five years or more shall be sent to the State Prison and the Board of Directors of the State Prison "is herewith authorized and directed to establish such rules and regulations as may be necessary for developing a system for paroling prisoners." The provisions for indeterminate sentences are as follows: "The various judges of the Superior Court of North Carolina are herewith authorized and directed, in their discretion, in sentencing prisoners to the State Prison to pass upon such prisoners a minimum and maximum sentence, thus making the sentence of said prisoner an indeterminate sentence and the board of directors of the State Prison is herewith authorized and directed to consider at least once every six months the cases of such prisoners as have been committed to the State Prison with an indeterminate sentence as to whether such prisoner is entitled to a discharge, shall take into consideration the said prisoner's record since committed to the charge of the Board of Directors of the State Prison: Provided, that said prisoner has served the minimum time to which he was sentenced after allowing credit for good behavior as authorized by law." It will be noticed that it is discretionary with the court whether to impose an indeterminate sentence or not. On the same day the legislature passed "An act to establish an advisory board of parole." This board is to consist of the Attorney-General, the chairman of the Board of Directors of the State Prison and the chairman of the Board of State Charities and the duties of the board are to act in an advisory capacity to the Governor with respect to the parole or conditional pardon of prisoners in the State Prison. In

¹Presented at the annual meeting of the Institute at Saratoga, N. Y., September 3, 1917.

²The membership of this committee is as follows:

Edward Lindsey, Warren, Pa., Chairman; Frank Randall, Boston; Edwin M. Abbott, Philadelphia.

pursuance of its general duty the Act provides that the board shall meet once each month in the office of the Attorney-General and carefully consider the record and all other facts and circumstances which may be produced to ascertain whether or not any prisoner should be recommended to the Governor as a proper person to be paroled on a conditional pardon. It is the duty of the superintendent of the State Prison after any prisoner has been confined in the State Prison as long as the minimum punishment prescribed by statute for the offense of which such prisoner was convicted provided such minimum punishment is not less than one-fourth the term for which such prisoner was sentenced by the court to lay the case of such prisoner before the next monthly meeting of the parole board. The board may, however, in its discretion take up the case of any prisoner prior to that time, but there is no provision for any application or petition to the board by or on behalf of the prisoner. The basis of recommendation by the parole board is left rather vague by the act, but if the board recommend the granting of parole to any prisoner, the Governor, if he approve of the recommendation "may grant a conditional pardon under his constitutional power to grant reprieves, commutations and pardons and according to the practice and procedure heretofore observed and followed in the granting of conditional pardons by the executive." The parole is for the balance of the term of sentence. The conditions of the parole are not clearly defined, but it is provided that the paroled prisoner shall report once a month to the clerk of the Superior Court of the county in which he resides "and show to the satisfaction of such clerk that by his industry and good conduct he has satisfied the condition of his parole." It is provided that if the Governor shall order the reimprisonment of any person discharged on parole, he may issue his warrant to the sheriff of any county to arrest such person and return him to the State Prison. Under what circumstances the Governor may do this is not specified in the act; it is left wholly to the Governor's discretion.

Illinois by act of June 25, 1917, has entirely revised her statute law relating to indeterminate sentence and parole. Under this revision, it is provided that persons convicted of treason, murder, rape or kidnapping, who are sentenced to imprisonment, shall be sentenced to a definite term. They are however subject to parole. It is further provided that except in the case of the crimes enumerated above, "every sentence to the penitentiary or reformatory and every sentence or commitment to any other state institution, now or hereafter, provided by law for the incarceration, punishment, discipline, training or reformation of persons convicted and sentenced to or committed to

such institution (not including however county jail) shall be a general sentence of imprisonment and the courts of this State imposing such sentence or commitment shall not fix the limit or duration of such imprisonment. The term of such imprisonment or commitment shall be for not less than the minimum, nor greater than the maximum term provided by law for the offense of which the person stands convicted or committed. It shall be deemed and taken as a part of every such sentence, as fully as though written therein, that the term of such imprisonment or commitment may be terminated earlier than the maximum by the Department of Public Welfare by and with the approval of the Governor in the nature of a release or commutation of sentence or commitment." It is further provided that the Department of Public Welfare shall establish rules and regulations for the parole of all such prisoners. The conditions of the parole are not stated except that no person can be released on parole until arrangements have been made for honorable and useful employment for such person and also for a proper and suitable home. It is the duty of the Department of Public Welfare to keep in communication with paroled prisoners and when any such person has served not less than six months on parole "acceptably" and in the opinion of the Department "has given such evidence as is deemed reliable and trustworthy that he or she will remain at liberty without violating the law and that his or her final release is not incompatible with the welfare of society" the said Department "shall have the power to cause to be entered of record in its department an order discharging such prisoner or ward for or on account of his or her conviction or commitment, which said order, when approved by the Governor shall operate as a complete discharge of such prisoner or ward in the nature of a release or commutation of his or her sentence."

Several states have amended their statutes relating to the indeterminate sentence and release on parole in certain particulars.

California.

On May 18, 1917, the legislature of California passed the following act on the subject of indeterminate sentence:

1168. a. Every person convicted of a public offense, for which public offense punishment by imprisonment in any reformatory or the state prison is now prescribed by law, if such convicted person shall not be placed on probation, a new trial granted, or imposing of sentence suspended, shall be sentenced to be confined in the state prison, but the court in imposing such sentence shall not fix the term or duration of the period of imprisonment.

b. It is hereby made the duty of the warden of the state prison

to receive such person, who shall be confined until duly released as provided for in this act; provided, that the period of such confinement shall not exceed the maximum or be less than the minimum term of imprisonment provided by law for the public offense of which such person was convicted.

c. It shall be the duty of the judge before whom such convicted person was tried, and of the district attorney conducting the prosecution, to obtain and with the commitment furnish to the state board of prison directors in writing, all information that can be given in regard to the career, habits, degree of education, age, nativity, parentage, and previous occupation, of such convicted person, together with a statement to the best of their knowledge as to whether such person was industrious or not, of good character or not, the nature of his associates and his disposition.

d. The governing authority of the reformatory or prison in which such person may be confined, or any board or commission that may be hereafter given authority so to do, shall determine after the expiration of the minimum term of imprisonment has expired, what length of time, if any, such person shall be confined, unless the sentence be sooner terminated by commutation or pardon by the governor of the state; and if it be determined that such person so sentenced be released before the expiration of the maximum period for which he is sentenced, then such person shall be released at such time as the governing board, commission or other authority may determine.

e. The state board of prison directors shall make all necessary rules and regulations to carry out the provisions of this act not inconsistent therewith, and may provide the forms of all documents necessary therefor.

f. Any convicted person undergoing sentence in either of the state prisons of this State, not sooner released under the provisions of this act shall, in accordance with the provisions of existing law, be discharged from custody on serving the maximum punishment provided by law for the offense of which such person was convicted.

The rules and regulations have not yet been announced by the Board of Prison Directors.

Kansas.

Kansas in 1917 provided for the establishment of a State Industrial Farm for Women to which shall be sentenced "every female person above the age of 18 years, who shall be convicted of any offense against the criminal laws of this State punishable by imprisonment." Such sentence shall be indeterminate but the imprisonment shall not exceed the maximum provided by law for the crime for which the per-

son was convicted. The persons so sent to the Industrial Farm may be paroled by the State Board of Corrections and shall be released absolutely "when it appears to the said Board of Corrections that there is a strong and reasonable probability that" such person "will live and remain at liberty without violating the law or that her release is not incompatible with the welfare of society."

Maine.

In 1917 a Board of Prison Commissioners was created which takes over the functions of the Advisory Board in the matter of paroles and the Board of Prison and Jail Inspectors.

Michigan.

Michigan amends her indeterminate sentence act by providing that: "Authority to grant parole under the provisions of this act is hereby conferred exclusively upon the governor in all cases of murder, actual forcible rape, for offenses by public officers in violation of their duties as such officers, and to all persons convicted and serving sentence for conspiracy to defraud public municipalities or the bribing or attempt to bribe of public officers. In all other cases such authority is hereby conferred upon the Advisory Board in the matter of pardons. The Governor and the Advisory Board in the matter of pardons acting jointly shall have authority to adopt such rules as may by them be deemed wise or necessary to properly carry out the provisions of this act and to amend such rules at pleasure: provided prisoners under the provisions of this act shall be eligible to parole only after the expiration of their minimum term of imprisonment."

It is also provided that the convict so paroled, while at large by virtue of such parole, shall be deemed to be still serving the sentence imposed upon him and shall be entitled to good time the same as if confined in prison.

Minnesota.

In Minnesota the legislature in 1917 has amended the indeterminate sentence act of that State by providing that the same shall not apply to persons convicted of treason or murder of the first or second degree and by providing that the court in passing sentence may fix the maximum term of imprisonment.

Montana.

Montana provides that both the minimum and maximum time of imprisonment shall be named in the sentence by the court; the minimum shall not be longer than one-half the maximum nor shall it be less than, nor shall the maximum be greater than the minimum and maximum respectively provided by law for the crime of which the person was convicted. Also any person so sentenced may in the dis-

cretion of the Governor and the State Board of Prison Commissioners be paroled at any time after he shall have served one-half of the minimum time specified in the sentence.

New York.

New York provides that the indeterminate sentence law shall apply to persons sentenced to life imprisonment except under a conviction for murder.

Oregon.

The Oregon acts have been amended so as to provide that the sentence of any person to imprisonment for a felony, except treason and murder, shall state both the minimum penitentiary penalty, which shall be fixed by the court and shall not exceed one-half of the maximum term of imprisonment established by law, and also the maximum penitentiary penalty for such crime which shall not exceed the maximum term of imprisonment provided by law therefor.

APPENDIX.

Questions.

1. Who may be committed under the indeterminate sentence?
2. Provisions for maximum and minimum term.
3. Parole Board.
4. Duties of Parole Board.
5. Regulation of petition or argument.
6. Prisoners eligible to parole.
7. Points considered in granting parole.
8. Conditions of parole.
9. What constitutes violation of parole?
10. System of arrest for violation of parole and fees attached thereto.
11. Penalty for violation of parole.
12. Conditions for final discharge of prisoners from parole.
13. How paroled prisoner is finally discharged.
14. Number of violations of parole.
15. Extent of parole system.
16. Number of prisoners now under parole.
17. Note. Miscellaneous remarks. Special provisions.

Answers.

North Carolina (Act of March 7, 1917.)

1. All persons convicted of crime whose sentence shall be for five years or more.
2. That in sentencing prisoners to the state prison the court shall pass upon such prisoner a minimum and maximum sentence.
3. Consists of the Attorney-General, the chairman of the Board of

Directors of the State Prison and the chairman of the Board of State Charities.

4. To act in an advisory capacity to the Governor with respect to the parole or conditional pardon of prisoners in the State Prison.
5. Cases are brought before the Board by the superintendent of the State Prison.
6. Any prisoner who has been confined as long as the minimum punishment prescribed by statute for the offense of which he was convicted, provided same is not less than one-fourth the term for which he was sentenced, whose conduct has been good.
7. Demeanor and conduct as shown by obedience to rules and regulations and any facts with respect to his past life and conduct.
8. To report monthly to the clerk of the Superior Court of the county in which he resides and show to the satisfaction of such clerk that by his industry and good conduct he has satisfied the condition of his parole.
9. Failure to report or bad conduct.
10. By order of the Governor directed to the sheriff of any county, expense to be paid by State Treasurer.
11. Time out on parole not to be deducted from original sentence.
12. Running of term of sentence.
13. If a prisoner is paroled the Governor grants a conditional pardon and the running of the term of sentence fully completes the condition.

Illinois (Acts of June 25, 1917).

1. Every person sentenced or committed to any state institution provided by law for the incarceration, punishment, discipline, training or reformation of persons (except county jails) except persons convicted of murder, treason, rape or kidnapping.
2. The maximum and minimum term provided by law for the offense of which the person was convicted.
3. The Department of Public Welfare has jurisdiction over paroles.
4. To keep a record of such facts as can be ascertained about prisoners, of their physical examination, and of their conduct and to establish rules and regulations for the granting of paroles. Also to keep in communication with prisoners on parole.
5. The Department of Public Welfare is authorized to establish

rules and regulations governing paroles but such have not yet been announced.

6. All persons committed to state institutions as under (1), whether for definite or indeterminate terms, after completion of minimum term.
7. The act makes no specification except that employment must have been secured for the prisoner.
8. The act does not specify.
9. The act does not specify.
10. The paroled prisoner may be arrested on the order of the warden, superintendent or managing head of the institution directed to any particular person. No fee is provided for.
11. The act does not specify.
12. That prisoner has served not less than six months on parole "acceptably" and has "given evidence that he will remain at liberty without violating the law and that his release is not incompatible with the welfare of society."
13. By order of the Department of Public Welfare, approved by the Governor.

STERILIZATION OF CRIMINALS

(Report of Committee "F" of the Institute, and a Minority Report)¹

WILLIAM A. WHITE, Chairman.

Your committee is confronted with the necessity of making another report on the question of the sterilization of criminals without their having accumulated during the past year any additional evidence sufficient in kind or quantity to modify the opinions of its several members from what they have heretofore expressed. The complexities of the problem are very great; they involve matters touching questions of heredity, questions of surgery, of law, of morals, religion and sociology, about which divers views are held, not only by people in general, but by the members of the committee in particular, and as in the past it has been found impossible to unite upon any common ground that was sufficiently definite to be of value. One member of the committee (Mr. Hart) says that he has "no faith in sterilization as a remedy in dealing with the problem of the criminal."² His review of the situation in California and Indiana to which he refers, and his reference to the general "reluctance on the part of the responsible authorities to proceed under the law," indicate that there is no evidence in his possession which makes it possible to come to definite conclusions. Another member of the committee (Dr. Gordon) very properly calls attention to the fact that it is first necessary to discover "whether criminal tendencies are inherited directly or not." Of course this opens the whole question of the theory of heredity, and also the whole question of criminology.

Another member of the committee (Mr. Bleecker Van Wagenen) says definitely, and this opinion is held by very many, including your

¹The membership of this Committee is as follows: William A. White, M. D., Government Hospital for the Insane, Washington, D. C., Chairman; Joel D. Hunter, Juvenile Court, Chicago; Hon. Edward J. Gavegan, Supreme Court, New York City; Bleecker Van Wagenen, 443 Fourth Ave., New York City; T. D. Crothers, M. D., Hartford, Conn.; H. H. Laughlin, Cold Springs Harbor, N. Y.; H. H. Hart, Russell Sage Foundation, New York; John W. Melody, Washington, D. C.; William T. Belfield, M. D., Chicago; Peter O'Callaghan, Washington, D. C.; Alfred Gordon, M. D., Philadelphia.

²Mr. Hart's views are expressed in a publication from the Department of Child Helping of the Russell Sage Foundation under the title "Sterilization as a Practical Measure."

chairman, that "I do not believe in inherited criminality as a trait," and follows with the natural corollary "and therefore see little use of studying sterilization as a remedy for crime independently of its association with true mental defect; i. e. inherited or inheritable."

Another member of the committee (Mr. Hunter) says, "The more I find out about it the stronger my feelings become against the sterilization of criminals as such."

One member (Dr. Crothers) is very much in favor of sterilization and thinks the committee should go on record as very definitely in support, while Dr. Belfield, the surgeon, raises certain surgical issues and particularly what he considers an erroneous impression, namely, "that vasectomy is a cruel and unusual punishment." In further correspondence, Dr. Belfield says with reference to this preliminary report presented that it "is so distinctly opposed to my conception of the problem that I must beg the privilege of submitting a minority report."

Mr. Laughlin writes, "I think the committee should insist that it be excused from writing further opinions not based upon research," and goes on to state that they of the eugenics office believe that "criminality as a unit trait is not inherited," but they do believe that certain factors that go to make anti-social individuals are inherited, and he cites as examples wanderlust, specific types of feeble-mindedness, lack of sex-control, and the lack of other moral inhibitions.

From the above citations it is quite evident that there is no unanimity of opinion among the members of the committee. There is all the way from an absolute assertion of the necessity for supporting unreservedly sterilization legislation to the conviction that there is no adequate scientific foundation for such legislation, and apparently all the way from the belief in its unconstitutionality based upon its being a cruel and unusual form of punishment to the absolute contrary.

Your committee is, therefore, of the opinion that no common ground of agreement which will be of value can be reached unless definite research work can be carried out upon a considerable scale. This it does not conceive is the proper work for the committee. Your committee, therefore, believes that there is no further necessity for being continued until scientific, statistical and social work has been completed by the various agencies now engaged therein to a sufficient extent to provide a sufficient basis of facts upon which some definite action may be erected.

MINORITY REPORT

WILLIAM T. BELFIELD

To the American Institute of Criminal Law and Criminology:

As a member of Committee F, I desire to record my dissent from the chairman's report, as follows:

This report consists of (1) a premise, and (2) a deduction therefrom.

Premise: The views held by various members of the committee concerning religion, morals and other topics are so diverse that "as in the past, it has been found impossible to unite upon any common ground" as to the merits of sterilization of criminals as a sanitary measure; hence the

Deduction: "There is no further necessity for" the continuance of a Committee on Sterilization.

The undersigned begs to suggest, as the logical deduction from the aforesaid premise, that the present members of the committee—a jury unable to agree upon a verdict—be replaced by men whose views on other topics do not incapacitate them for the study of a problem in public welfare.

DRUGS AND CRIME

(REPORT OF COMMITTEE "G" OF THE INSTITUTE.)

FRANCIS FISHER KANE, *Chairman*.¹

Your committee welcomes this opportunity to lay before you what it conceives to be the principal elements in the narcotic drug problem in its relation to crime. Much good, we believe, will come from an intelligent discussion of the problem, although its full and complete solution is in the far future.

It is for the doctors primarily to tell us what should be done with the unfortunate drug habitué. He is a sick man, but he is also a criminal and a menace to the community. If he is of independent means, his family will take care of him, or he will be put into a sanitarium, but if he is a poor man, he will sooner or later lose his job and become a burden on the authorities, in one way or another. From the very nature of the drug habit the moral sense is blunted and the man drifts into crime. Often where the taking of drugs is an incident of dissipation—and most drug taking so begins—the man after losing his regular work, finds that he can make money in passing the drug on to others. He becomes a drug carrier or peddler in the city tenderloin, thus making from day to day enough money to keep himself supplied with the morphine or heroin he uses. This is the explanation of why so many of the peddlers or dealers brought before our courts are themselves drug habitués.

Many crimes themselves induce drug-taking. The nerve strain creates the desire for a stimulant, the subsequent anxiety or exhaustion, the desire for a quietant. Cocaine or heroin supplies the stimulant, and morphine, or heroin, curiously enough, the quietant. Thus it happens that the use of cocaine and the commission of crimes of violence go together. Cocaine parties among the negroes mean knife

¹The membership of this committee is as follows:

Francis Fisher Kane, U. S. District Attorney, Philadelphia, Chairman.

S. C. Kohs, Stanford University, Cal.

John Marshall, M. D., University of Pennsylvania, Philadelphia.

L. L. Stanley, M. D., State Prison, San Quentin, Cal.

Charles E. Scelesh, M. D., House of Correction, Chicago.

Robert J. Sterrett, Assistant U. S. District Attorney, Philadelphia.

H. C. Stevens, M. D., University of Chicago, Chicago.

This report was presented at the Eighth Annual Meeting of the Institute at Saratoga, N. Y., September 3, 1917.

slashings and assaults. This is recognized by the police, as well as the fact that many burglars and pickpockets take cocaine to nerve them for their trade. Prostitutes take cocaine and heroin; heroin apparently both to keep them going, and to allay the pain and nervousness that follow.

When compared with the liquor evil the drug problem does not loom large. Its extent is of course circumscribed. Probably drug-taking among the rich and well-to-do is growing less. Probably, notwithstanding all that has been done to check it, it is increasing in the lower walks of society. And remember it has no excuse whatever for its existence. There is no such thing as a temperate or moderate use of narcotic drugs; to take them at all except under the doctor's prescription for the alleviation of pain, and then only under certain circumstances, cannot be defended on any ground whatever. Whoever heard of a person giving himself a hypodermic injection of morphine or heroin for social purposes? We are in no sense interfering with natural tastes or cravings by interdicting the indiscriminate sale of morphine, heroin and cocaine. Laws have been passed to prevent such indiscriminate selling and the laws command popular approval, and yet enormous quantities of narcotics are still sold illegitimately. Before the war it was estimated that the illegitimate use was probably 80% of the whole. Of course, the war has increased the legitimate demand enormously. Nevertheless, the illegitimate use is still out of all proportion to the legitimate. No one contends that the legitimate manufacturer intentionally supply the illegitimate trade. Indeed it is hardly likely that any morphine is made in this country deliberately to supply the underworld. And yet it gets there all the same. Heroin came, originally from Germany, but large quantities of it are now made in this country, and sold as medicine for the legitimate needs of the profession. The story of how it came to be used among criminals has been told by an ex-convict, who spent many years in one of our state penitentiaries. He says that whenever he and his fellow prisoners were afflicted with a cough they made it an excuse to get some sort of soothing pills from the prison doctor, and that the news soon spread around the prison, and from the prison to the outside world, that there was a new and most agreeable remedy to be obtained under the name of heroin. It was "good dope." The news spread from one city to another, and soon afterwards the underworld everywhere was using it. The heroin habit was thus established in our tenderloins when the Harrison Act went into effect, and the drug can still be had in our large cities at the street corners in the vice districts, if you only have enough money to pay for it. The poor

girl of the streets will tell you it is better than morphine because it is twice as strong. It does not have the same unpleasant effects upon the digestive apparatus.

The question recurs, how does this vast supply—for it is a vast supply—of narcotics get into the hands of the illegitimate trade? How does the supply find its way into the hands of the large dealers, who in turn pass it over to the peddlers and carriers of our red light districts. Doubtless, a large part comes from Canada, into which it was imported from this country; some from Mexico, the rest directly from sources in this country. The Harrison Act does not attempt to regulate the exporting and importing of narcotic drugs; it covers solely the trading in such drugs within the country. Consequently the large dealer can fill an order for a firm in Toronto, and then portions of the order can find their way back into the United States, carried, it may be, in the grip-sacks of innocent looking travelers across the Niagara River, returning to their native land from the Dominion. It will be remembered that enough heroin to kill all the inhabitants of a large city can be carried in an ordinary grip-sack, and although Pullman parlor car porters, as a class, are fine specimens of their race and honest, too, there are exceptions to the rule who are willing not to ask embarrassing questions about packages placed in their custody when the frontier is crossed.

It has been proposed to extend the provisions of the Harrison Act to foreign commerce, and better still, to require manufacturers of medicines to put up their goods in small amounts and place on each package a serial number. In this manner the particular drugs seized by the officers of the law in the hands of the drug peddler, let alone a large supply found in the possession of a dealer, might be traced back to the manufacturer, and through his books and records it would not be difficult to ascertain the various middlemen through whose hands the drugs had passed. It has been argued that the last seller would destroy the label or that he would at least erase the serial number. This would, in certain cases, undoubtedly be done, but there would be many others where it would not be done, for the illicit vender has always to prove that the pills or powders which he sells contain the genuine article. He cannot otherwise get the high prices which he seeks, the user requiring proof that he is buying the drug he asks for. We have known of at least one dope fiend who insisted on proof that the morphine he was buying was the Powers & Weightman article. He was not to be put off with an inferior grade. Consequently, drugs for the illegitimate trade must be kept in their original packages as long as possible, and a provision such as we have suggested requiring the

stamping of serial numbers on all packages would be of considerable use in checking the illegal traffic.

One of the worst aspects of the drug evil is that the users that get before our courts are, for the most part, young men and women. Doctors explain this by saying that the mortality among the users is very great; ten years is given as the maximum of life for the confirmed cocaine or heroin user. Death does not come directly from the drug, but the taker's system becomes undermined. He falls an easy prey to tuberculosis, or some intestinal or cardiac trouble. Certain it is that the confirmed habitué takes scarcely any nourishment; that he looks as if a puff of wind would blow him over. There are indeed rare instances in which men and women take morphine and grow old. But these are not cases of real drug dissipation and the amounts taken and the frequency of the doses are not such as to render normal life impossible. Another very serious aspect of the matter is that most of the habitués that are before our courts are persons of American birth. Why this is so we do not know, but the fact is not a pleasant one to contemplate. Over a year ago it was found that in Philadelphia cocaine was being sold to the children of one of our public schools, and probation officers have reported quite little-children who knew how to give themselves hypodermic injections of morphine and heroin.

Drug-taking in our large cities has become to an alarming extent the concomitant of ordinary dissipation. A criminal lawyer of wide experience recently called attention to this fact. When he was a boy it was unknown, and the corner loafer who drifted into vice knew nothing in the way of stimulants besides those of alcoholic origin. Now all this is changed, and the young sport does not think he's really "going it" until he tries opium in some form, or "lights himself up" with cocaine. Formerly he was content with prostitutes and drinking; now it is vice, plus heroin and cocaine. Worse than this it is a common sight in our large cities in the east to see sailors and soldiers in vile joints under the influence of narcotic drugs. They get them from the unfortunate women they associate with, and although the number of drug habitués in the army and navy is mercifully small, the danger to the younger fellows can hardly be over-estimated. The danger of venereal diseases is bad enough, but now to this is added the evils of cocaine and heroin. Shocking cases of drug poisoning are being constantly reported in the newspapers of our great cities.

What is the remedy? Punish the dealer as severely as you can, but how about the user? To lock up the confirmed user for a short period of time does him no good whatever, for he will return to the

drug again as soon as he can get it. Nothing short of a year's separation from most narcotics will break up the habit. Drug victims must be cut off from old surroundings, removed from the temptations to which they succumbed, and this separation must be maintained for a long period of time, under strict discipline at first, relaxed afterwards by degrees as they regain self-control and not taken away suddenly. Occupation meanwhile is a prime necessity. Mind and body must have work. Idleness does not supply the alternative required. With idleness no cure is possible. This is the thought, of course, back of the so-called inebriate farms that have been started in one or two of our states. Drug-takers, as well as alcoholics should be put on farms, and kept there for long periods of time, and not allowed to go back to the "tenderloins" from which they came. Some doctors will tell you that the drug-taker became what he is through an inherent weakness of character. He was, they say, a weak, worthless individual before he began taking the drug that now has such a disastrous hold upon him, and therefore you need waste no pity on him. But the fact remains that in communities where drug-taking is unknown, weak individuals neither fall so low nor become such a menace to the safety of their fellow citizens. Even assuming therefore that such doctors are right in their conclusion, we should continue in every possible manner to prevent the illegitimate sale of narcotic drugs.

We have thought that it would be of use to append to this report the recommendations of the Commissioner of Internal Revenue for the amendment of the Harrison Act in order to make its provisions more effective. And we have appended also a copy of the recent act by the Legislature of Pennsylvania, which after the most careful consideration was drawn and passed with a view not only of meeting the problem of the drug user (the Jin Fuey Moy case having in this respect impaired the usefulness of the Harrison Act), but also with a view of preventing and punishing illegitimate drug-selling by unprincipled physicians under cover of prescriptions issued to effect "reduction cures." It was found in Philadelphia that a considerable number of such practitioners had been thus supplying dope fiends with their drugs, and in this manner not only violating the plain spirit of the Harrison Act, but violating it in a way that made it difficult to prosecute them. Finally, we have appended a summary of legislation on the drug evil in states other than Pennsylvania. It is hoped that the subject will thus secure the attention it deserves.

APPENDIX.
THE PENNSYLVANIA ACT.
AN ACT.

For the protection of the public health by regulating the possession, control, dealing in, giving away, delivery, dispensing, administering, prescribing, and use of certain drugs and keeping records thereof by regulating the use of drugs in the treatment of the drug habit by providing for the revocation and suspension of licenses of physicians, dentists, veterinarians, pharmacists, druggists and registered nurses for certain causes and by providing for the enforcement of this act and penalties.

Section 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met and it is hereby enacted by the authority of the same, That except as limited in section two of this act the word "drug" as used in this act shall be construed to include (a) opium, or (b) cocoa leaves, or (c) any compound or derivative of opium or cocoa leaves, or (d) any substance or preparation containing opium or cocoa leaves, or (e) any substance or preparation containing any compound or derivative of opium or coca leaves.

Section 2. The word "drug" shall not be construed to include (1) preparations and remedies and compounds which do not contain more than two grains of opium or more than one-fourth of a grain of morphine or more than one-eighth of a grain of heroin or more than one grain of codeine, or any salt or derivative of any of them in one fluid ounce if the same is liquid or if a solid or semi-solid in one avoirdupois ounce, (2) liniments, ointments or other preparations prepared and dispensed in good faith for external use, only providing such liniments, ointments and preparations do not contain cocaine or any of its salts, or alpha or beta eucaine or any of their salts, or any synthetic substitute for cocaine or eucaine or their salts. (3) Decocainized coca leaves or preparations made therefrom or other preparations of coca leaves which do not contain cocaine;

Provided, however, That no preparations, remedies or compounds containing any opium or coca leaves or any compound or derivative thereof in any quantity whatsoever may be sold, dispensed, distributed, or given away to or for the use of any known habitual user of drugs except in pursuance of a prescription of a duly licensed physician or dentist.

Section 3. The word "person" as used in this act shall be construed to include an individual, a co-partnership, a corporation, or an association. Masculine words include the feminine or neuter. The singular includes the plural. The word "prescription" shall be con-

strued to designate a written order by a duly licensed physician, dentist, or veterinarian calling for a drug or for any substance or preparation containing a drug.

Section 4. No person shall have in his possession or under his control or deal in, dispense, sell, deliver, distribute, prescribe, traffic in, or give away, any of said drugs. This section does not apply in the regular course of their business, profession, employment, occupation, or duties to (a) manufacturers of drugs, (b) persons engaged in the wholesale drug trade, (c) importers or exporters of drugs, (d) registered pharmacists actually engaged as retail druggists, (e) bona fide owners of pharmacies or drug stores, (f) licensed physicians, (g) licensed dentists, (h) licensed veterinarians, (i) persons in the employ of the United States or of this Commonwealth, or of any county, municipality or township of this Commonwealth, and having such drugs in their possession by reason of their official duties, (j) warehouse men or common carriers engaged bona fide in handling or transporting drugs, (k) persons regularly in charge of drugs in dispensaries, hospitals, asylums, sanitariums, poorhouses, jails, penitentiaries or public institutions, (l) nurses under the supervision of a physician, (m) persons in charge of a laboratory where such drugs are used for the purpose of medical or scientific research only, (n) captains or proper officers of ships, upon which no regular physician is employed, for the actual medical needs of the officers and crews of their own ship only, (o) persons having said drugs in their possession for their own personal use only, provided that they have obtained the same in good faith for their own use from a duly licensed physician or dentist or in pursuance of a prescription given them by a duly licensed physician or dentist, (p) persons having said drugs in their possession for the use of an animal belonging to them provided that they have obtained the same in good faith from a duly licensed veterinarian for the use of such animal or in pursuance of a prescription given by a duly licensed veterinarian, (q) persons in the bona fide employ of any of the persons above enumerated.

Section 5. No person shall use, take or administer to his person, or cause to be administered to his person, or administer to any other person, or cause to be administered to any other person any of the aforesaid drugs except under the advice and direction and with the consent of a regularly practicing and duly licensed physician or dentist.

Section 6. No manufacturer, producer, importer, exporter, or person engaged in the wholesale drug trade and regularly selling drugs shall sell, dispense, distribute, or give away any of said drugs except

to (a) a duly licensed physician, (b) a duly licensed pharmacist, (c) a duly licensed dentist, (d) a duly licensed veterinarian, (e) a manufacturer of drugs, (f) a person engaged in the wholesale drug trade and regularly selling drugs, (g) an exporter of drugs, (h) a bona fide hospital, dispensary asylum or sanitarium, (i) a public institution, (j) a bona fide owner of a pharmacy or drug store, (k) a person in a foreign country, (l) a person in charge of a laboratory where such drugs are used for the purpose of scientific and medical research only, (m) the captain or proper officers of a ship, upon which no regular physician is employed, for the actual medical needs of the officers and crew of such ship only, (n) a person in the employ of the United States, of this Commonwealth, or of any county, municipality or township thereof purchasing or receiving the same in his official capacity.

No manufacturer, producer, importer, or person engaged in the wholesale drug trade and regularly selling drugs shall sell, dispense, distribute, or give away any of said drugs, except in pursuance of a written order signed by the person to whom such drug is sold, dispensed, distributed or given. Such order shall be preserved for a period of two years in such a way that it will be readily accessible to inspection by the proper authorities.

Section 7. No registered pharmacist or bona fide owner of a pharmacy or drug store regularly engaged in the sale of drugs at retail shall sell, dispense, distribute, or give away any of said drugs except to (a) another registered pharmacist or bona fide owner of pharmacy or drug store, (b) a duly licensed physician, (c) a duly licensed dentist, (d) a duly licensed veterinarian, (e) a bona fide hospital, dispensary, asylum, sanitarium, or public institution, (f) an individual in pursuance of a written prescription issued by a physician, dentist, or veterinarian, which prescription shall be dated as of the day on which signed and shall be signed by the physician, dentist, or veterinarian who issued the same, (g) a person in charge of a laboratory where such drugs are used for the purpose of medical or scientific research only, (h) the captain or proper officer of a ship, upon which no regular physician is employed, for the actual medical needs of the officers and crew of such ship only, (i) a person in the employ of the United States, or of this Commonwealth, or of any county, municipality, or township thereof, purchasing or receiving the same in his official capacity.

No registered pharmacist or bona fide owner of a pharmacy or drug store regularly engaged in the sale of drugs at retail shall sell, dispense, distribute, or give away any of said drugs, except in pursuance of a written order signed by the person to whom such drugs are sold, dispensed, distributed, or given. Such order shall be pre-

served for a period of two years in such a way that it will be readily accessible to inspection by the proper authorities. When such drugs are sold, dispensed, distributed, or given to an individual in pursuance of a prescription, such prescription shall be regarded as the written order herein required and no further written order shall be necessary.

Section 8. No physician or dentist shall sell, dispense, administer, distribute, give, or prescribe any of said drugs to any person known to such physician or dentist to be an habitual user of any of said drugs, unless said drug is prescribed, administered, dispensed, or given for the cure or treatment of some malady other than the drug habit; Provided, however, That if any physician desires to undertake in good faith the cure of the habit of taking or using opium or any of its derivatives in any form such physician may prescribe or dispense opium or its derivatives to a patient, provided such opium or its derivatives are prescribed or dispensed in good faith for the purpose of curing such patient of such habit and not merely for the purpose of satisfying a craving for the drug. In every such case the physician shall himself make a physical examination of the patient and shall report in writing to the proper officer of the board of health of the city, borough, town, or township in which he resides, or to the State Department of Health, where there is no local board of health, the name and address of such patient together with his diagnosis of the case and the amount and nature of the drug prescribed or dispensed in the first treatment. When the patient leaves his care such physician shall report in writing to said officer of the board of health or to the State Department of Health the result of his said treatment.

Any person divulging any information contained in any such report, except for the purpose of enforcing this act, or to a physician who may, in the opinion of the chief of the board of health or of the Commissioner of Health, be entitled to such information for the purpose of enabling him to comply with the provisions of this act, shall be sentenced to pay a fine not exceeding one thousand dollars or to undergo an imprisonment not exceeding one year, or both in the discretion of the court.

Section 9. No physician, dentist, or veterinarian shall administer, dispense, give away, deliver or prescribe any of said drugs except after a physical examination of the person or animal for whom said drugs are intended, said examination to be made at the time said prescription is issued or at the time said drug is administered, dispensed, given away, or delivered by said physician, dentist, or veterinarian. No veterinarian shall sell, dispense, distribute, give, or prescribe any drug for the use of a human being.

Section 10. Every physician, dentist, and veterinarian shall keep a record of all said drugs administered, dispensed, or distributed by him showing the amount administered, dispensed, or distributed, the date, the name and address of the patient, and in the case of a veterinarian the name and address of the owner of the animal to whom such drugs are dispensed, or distributed. Such record shall be kept for two years from the date of administering, dispensing, or distributing such drug, and shall be open for inspection by the proper authorities. No record need be kept of any drug administered in an emergency case.

Section 11. This act shall not be construed to apply to the treatment of habitual users of drugs in public hospitals, sanitariums, poor-houses, prisons, or public institutions.

Section 12. Any person who shall violate or fail to comply with any of the provisions of this act, except as provided in the last paragraph of section eight, shall be guilty of a misdemeanor, and upon conviction shall be sentenced to pay a fine not exceeding two thousand dollars, or to undergo an imprisonment not exceeding five years, or both at the discretion of the court. If the violation is by a corporation, co-partnership, or association the officers and directors of such corporations or the members of such co-partnership or association, their agents and employes with guilty knowledge of the fact shall be deemed guilty of a violation of the provisions of this act to the same extent as though said violation were committed by them personally.

Section 13. In any prosecution under this act it shall not be necessary to negative any of the exemptions of this act in any complaint, information, or indictment. The burden of proving any exemption under this act shall be upon the defendant.

Section 14. Any license heretofore issued to any physician, dentist, veterinarian, pharmacist, druggist, or registered nurse may be either revoked or suspended by the proper officers or boards having power to issue licenses to any of the foregoing, upon proof that the licensee is addicted to the use of any of said drugs, after giving such licensee reasonable notice and opportunity to be heard.

Section 15. Whenever any physician, dentist, veterinarian, pharmacist, druggist, or registered nurse is convicted in a court having jurisdiction of any violation of this act the license of such physician, dentist, veterinarian, pharmacist, druggist, or registered nurse may be revoked or suspended by the proper officers or boards having power to issue licenses to any of the foregoing classes, after giving such licensee reasonable notice and opportunity to be heard.

The term "license" as used in sections fourteen and fifteen of this

act shall be construed to include all licenses heretofore issued to any physician, dentist, veterinarian, pharmacist, druggist, or registered nurse, whether said license was issued by the officers or boards at present having power to issue the same or whether granted under previous authority.

The term "officers or boards" as used in sections fourteen and fifteen of this act shall be construed to designate such officers or boards as have power to issue licenses to physicians, dentists, veterinarians, pharmacists, druggists, or registered nurses at the time the power to revoke or suspend the license is exercised.

Section 16. The provisions of this act shall be enforced by the Department of Health of the Commonwealth of Pennsylvania, and for that purpose the Commissioner of Health is hereby authorized to establish in the Department of Health a bureau or division for such purpose and to employ such assistants, stenographers, inspectors, clerks and other employes as in his opinion may be necessary and to fix their compensation. For the purpose of enforcing the provisions of this act the Commissioner of Health and his assistants either in said bureau or division, or any other bureau or division of his Department shall have the right to examine at any time any or all of the records required by this act to be kept and the Commissioner of Health may further require persons dealing in, buying, selling, handling or giving away drugs to make such reports to him or to the bureau aforesaid as he may deem necessary or advisable. This section shall not be construed to exclude the other duly constituted authorities in this Commonwealth from enforcing the provisions of this act.

Section 17. All acts and parts of acts inconsistent with this act are hereby repealed.

STATUTES OF THE VARIOUS STATES, PERTAINING TO THE SALE AND
USE OF NARCOTIC DRUGS.

ALABAMA.

No pertinent legislation found.

ALASKA.

No legislation found on subject.

ARKANSAS.

1916 Digest of Statutes, Chap. CLXI., Sec. 7824, no person can sell or give away, save on prescription of a physician or dentist, and prescription not to be filled but once. By Section 7825 Ibid. granting a prescription for one addicted to habitual use of cocaine or preparation or compound of same punished by fine of \$25 to \$100, or imprison-

ment in county jail for thirty to ninety days. By Section 7826 Ibid. it is unlawful to sell at retail, arsenic and its compound, strychnine, etc.

CALIFORNIA.

Kerr's Cumulative Supplement annotated, 1906-13.

Digest of 1913, Par. 2185, c. page 290, by Constitutional provision; without the Governor's approval, March 21, 1911, Stats. and Amdts., 1911, page 396, any person addicted to the intemperate use of narcotics or stimulants as to have lost the power of self control, or is subject to dipsomania or inebriety, may be confined in a hospital for the care and treatment of the insane, designating in such order for a definite period, not to exceed two years, etc., and by par. 171 A Ibid., p. 2047, any person who brings into any state prison, town or county jail, or city, or city county jail, or reformatory in this state, or within the grounds belonging to or adjacent to any such institution, any opium, morphine, cocaine, or other narcotic or intoxicating liquors is guilty of a felony.

COLORADO.

By act of April 9, 1915, Chap. 75, p. 208, of Sess. Laws of Colorado, it is unlawful for any person to sell, barter exchange, distribute, give away, or in any manner dispose of at retail or to a consumer opium or coca leaves or any compound, manufactured salt derivative or preparation thereof, except from original prescription of a duly licensed physician, dentist or veterinary surgeon. Punishment \$100 to \$300, or by imprisonment from thirty days to six months, Ibid., Act of April 3, 1913, Chap. 57, of Sess. Laws, of Colorado, 1913.

CONNECTICUT.

Revision of General Statutes of Conn. 1902.

By Sec. 4734, every person except when prescribed by a practising physician, or sold at wholesale to licensed pharmacists, or for use in manufactures or the arts, shall label with the word "poison" the following drugs: "Acid carbolic, ammoniated mercury, acid muriatic, chloroform, acid nitric" and any other drugs.

Sec. 1153 Ibid.

25 years punishment, maximum, for administering drugs to any person with intent to commit robbery or any other crime.

Sec. 2162 Ibid.

Effects of alcohol and narcotics on health to be taught as a regular branch of study to pupils above 3rd grade in public schools, etc.

Chap. 313, Page 2175, Public Laws, 1915.

Habitual users not to be furnished with.

DELAWARE.

Revised Code of Delaware, 1915, Sec. 3595 p. 1649.

Selling to any one save to licensed physicians on authority of certificate of such licensed physician punished by fine not exceeding \$2,000 or imprisonment not exceeding one year. Act does not apply when persons are sick and in actual need of such drugs as a medicine.

FLORIDA.

Florida Compiled Laws Ann., 1914, Sec. 3537 b, page 1756.

Keeping opium den or selling it or any preparation to be smoked is punished by imprisonment not exceeding 2 years or by fine not exceeding \$2,000.

GEORGIA.

Park's Annotated Code, Vol. 6.

By Sec. 455 druggists and pharmacists may not sell or deliver without causing entries to be made stating date of delivery, name and address of person receiving, name and quantity of the poison, the purpose for which it was represented by such person to be required, and name of dispenser. Book open for public inspection for 5 years.

By Sec. 1651, Vol. 1 can only be sold, furnished or given away except upon original order or prescription licensed physician, dentist, etc.; 1652, Vol. 1, prohibits furnishing to habitual users of narcotic drugs by physician except when under his care and in good faith.

HAWAII.

Revised Laws of 1915.

By Sec. 2073 sellers must have a license to dispense. Sec. 918 gives Board of Health control over. Sec. 2075 makes smoking or using opium a penalty.

IDAHO.

Session Laws, 1915.

Chap. 61, page 148, may be sold only on prescription.

ILLINOIS.

Laws of 1915.

Senate bill, 300, page 500.

Sale of upon prescription—only registered pharmacists to dispense—physician may not sell to habitual user unless under his care and in good faith.

INDIANA.

Acts of 1913.

Chap. 118, page 306.

Only upon prescription of registered physicians, veterinarian or dentist.

IOWA.

Supplemental Supplement Code of Iowa Index, 1915.
Furnishing to inebriates a penalty S. 2310, a24 and S. P. 857.

KANSAS.

General Statutes of Kansas, Ann. 1915.
Narcotics not furnished to minors. Sec. 6397 and 6398.
By Act of Legislature 1909, Chapter 184, the matter left largely
with the State Board of Health.

KENTUCKY.

Kentucky Statutes, Carroll, 1915, Vol. 1.
Cocaine or its salts can be sold only on physicians', dentists' or
veterinarian surgeons' prescription, etc. Sec. 2635a.
Poisons must be so labeled and registry kept. Sec. 2630.

LOUISIANA.

Acts of State of La., Regular Session of 1914, Second Extra Session,
1913.

Manufacture, sale and transportation of, regulated. Rules of to
be made by State Board of Health. Act No. 282, page 566.

MAINE.

Laws of Maine, 1915.
Chap. 142, page 103.
Physicians, surgeons, etc., may sell or prescribe in good faith.

MARYLAND.

Laws of Maryland, 1916.
No narcotic act up to and including 1916.
Sale, etc., to or for insane prohibited.
Chap. 566, page 1162.

MASSACHUSETTS.

Acts and Resolves of Mass., 1914.
Sale, etc., prohibited except on prescriptions, etc., Chap. 694, page
704, effective January 1, 1915, and Chap. 187, p. 167, General Acts
of Mass. 1915.

Special Acts and Resolves of Mass., 1916.

Commission of three members to investigate use of habit-forming
drugs. Commission serves without compensation. Chap. 112, p.
523.

General Acts of Mass., 1916.

Search warrants authorized relating to drugs. Chap. 117, p. 91.

MICHIGAN.

Public Laws Sess., 1915.
Sale, etc., of habit-forming drugs, regulated. P. 195.

MINNESOTA.

Laws of Minn., 1915.
Sale of narcotic drugs prohibited. Chap. 260, p. 358.

MISSISSIPPI.

Laws of Miss., 1914, and Extra Sess., 1913.

No laws on in Acts of 1914 and 1913.

MISSOURI.

Laws of Missouri, 1915.

Cocaine and other drugs—sale of—must have prescription for—
exceptions p. 279.

MONTANA.

Laws of Montana, 1915.

Little regulation of.

Unlawful for any person other than registered pharmacist to retail
drugs, medicines, etc., exception of physician, etc., p. 292.

NEBRASKA.

Laws of Nebraska, 1915.

Sale, etc., regulated, p. 405-6.

NEVADA.

Stat. of Nevada, 1915.

Sale, etc., regulated, p. 119, Chap. 101.

NEW HAMPSHIRE.

The Public Statutes and Sess. Laws of N. H.

Sale, etc., of regulated.

Supp. 1901-13, inc.

Chap. 162, p. 320.

NEW JERSEY.

Laws of N. J., 1915.

Narcotics delivered only on prescription, pages 53, 636.

NEW MEXICO.

New Mexico, Stat. Ann., 1915.

No laws on that I can find from recent acts.

NEW YORK.

Laws of N. Y., 138 Sess., 1915, Vol. 2.

Sale, etc., regulated, Chap. 327, p. 1017.

NORTH CAROLINA.

Public Laws of N. C., 1909.

Narcotics, sale to habitués forbidden, p. 1106—not a strong act
against general use of. Nothing later than this act.

NORTH DAKOTA.

Compiled laws of N. D., 1913.

Sale, etc., of cocaine on prescription by physician, etc. Secs. 2942
and 2943, Chap. 154, of Act. of 1915.

OHIO.

Supp. to Page & Adam's Ohio Gen. Code, 1916, Vol. 4.

Sale, etc., regulated by several sections: 12672 et seq.

OKLAHOMA.

Revised laws of Oklahoma, Annotated 1910, Vol. 2.
Sale, etc., of cocaine, etc., etc., prohibited. Decisions 6843-46.

OREGON.

Found nothing in the Acts of 1911-13 and 1915, of this state on the subject.

PENNSYLVANIA.

According to instructions, have not looked into the Acts here.

PHILLIPINE ISLANDS.

Have been unable to find definite laws concerning the subject under the laws of these islands.

PORTO RICO.

Comp. of Revised Stat. & Code, of P. R., Vol 1.
Pharmacist, etc., may sell. Sec. 1759 et seq.

RHODE ISLAND.

Public Laws of R. I., 1914.
Sale, etc., regulated. Chap. 1087, p. 149.

SOUTH CAROLINA.

Code of Laws of S. C., 1912, Vol. 2.
Sale of cocaine, etc., regulated. Sec. 405, Criminal Code.

SOUTH DAKOTA.

Session Laws of 1915.
Sales regulated, Chap. 160, p. 338, and Chap. 161, p. 339.

TENNESSEE.

Found no act governing sale, save as to inebriates, etc.

TEXAS.

Found no narcotic act up to 1915.

VERMONT.

Laws of Vermont, 1915.
Sale, etc., regulated, No. 197, p. 336.

VIRGINIA.

Found no laws up to 1916.

WASHINGTON.

Found no laws up to 1915.

WEST VIRGINIA.

Found no laws up to 1915.

WISCONSIN.

Laws of Wisconsin, 1913.
Sale of, etc., regulated, Chap. 234, p. 240.

WYOMING.

Session Laws of 1915.
Sale, etc., of regulated, Chap. 78, p. 77.

A DIGEST OF LAWS ESTABLISHING REFORMATORIES FOR WOMEN IN THE UNITED STATES¹

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INTRODUCTION.

If a homogeneous group of legislative enactments, considered together with their chronological and geographical distribution, may be interpreted as a barometer of social pressure, there is a widespread and steadily increasing demand for legislation establishing women's reformatories in the United States.

Until 1869, statutory provisions for the custodial care of women convicted of violations of the law were limited to the state prisons in cases of felony and to the jails or houses of correction in cases of misdemeanor. In that year, Indiana established a separate prison, managed and officered by women, to which all women prisoners confined in the state prison were transferred (1873). Although this institution was a reformatory-prison rather than a reformatory in the more recent understanding of the word, the principle that the problem of the delinquent woman is to be differentiated from that of the delinquent man, had for the first time been incorporated into the written laws of the nation. In 1874, Massachusetts enacted similar legislation. New York followed in 1881, 1890 and 1892, and Ohio in 1900, after which there was no further legislation of this type until 1910.

During this period of forty-one years, however, certain other parallel legislation had been taking place. In 1877 New York passed the progressive law which created the Elmira Reformatory. With this there began a series of similar enactments establishing not only correctional institutions for young men in other states, but industrial schools for boys, and, later, industrial schools for girls, until by 1915 all but twelve states had provided by statute for the custodial care and education of delinquent girls. This movement doubtless accelerated the demand for an institution intermediate between those industrial schools on the one hand and the state prisons and the jails on the other, and is one of the causes behind the fact that in the five year period from 1910 to 1915, six states—two more than during the forty-

¹A digest of these laws, topically arranged, will be found at the end of this article.

²For the Committee on Delinquent Women of the Connecticut Prison Association.

one preceeding—established reformatories for women: New Jersey in 1910, Ohio in 1911, Pennsylvania and Wisconsin in 1913 and Maine and Minnesota in 1915. If to these ten are added three others—Alabama, Nebraska and Oregon—whose institutions do not conform to the definition used in the present study—and six more—Arizona, Arkansas, Connecticut, Michigan, North Carolina and Rhode Island—in which efforts for legislation are being made, the statement that the demand for women's reformatory legislation is gaining a widespread impetus, becomes self-evident.

But with the popular demand for legislation and the increasing number of statutes enacted arises the danger that the bills introduced will be either hasty modifications of local laws passed for other purposes or thoughtless imitations of the acts of other states, neither of which may meet the needs of the community in which the legislation is proposed. Each successive act, on the other hand, is potentially a contribution to the movement as a whole, since by incorporating the best provisions of preceding statutes with new features demanded by advancing public opinion it represents the highest standard yet reached.

But without a compilation of these laws for convenient reference the drafting of such a bill becomes arduous if not prohibitive. Such a compilation, however, was not available when the Committee on Delinquent Women, appointed by the Connecticut Prison Association to prepare a bill providing for the establishment of a reformatory for women in the state of Connecticut, began its task in the autumn of 1916. It became necessary, therefore, to ascertain at first hand not only which of the United States had created such institutions and by what acts of legislation, but to separate, condense and classify their provisions for the purposes of comparison and discussion. These statutes, thus collected and classified by a sub-committee, were then presented to the committee-at-large. This committee of eighteen women, representative of the entire state, selected by parliamentary vote, those provisions which seemed best fitted to the conditions of their various communities for incorporation into the bill subsequently drafted and introduced into the legislature in January, 1917.³ In the faith that it may be of service to other groups, in the thirty-seven states still without adequate provision for the custodial care and education of their delinquent women, this digest of all the laws (January,

³This bill, with only minor alterations, was passed by both houses and signed by the governor, May, 1917.

1917),⁴ establishing women's reformatories in the United States, is presented.

THE DATA.

To the questionnaire sent out to the attorney-generals of the forty-eight states of the union in order to ascertain (1) if the state had established an institution for delinquent women, and (2) if so, by what form of legislation, thirteen responded in the affirmative and thirteen sets of statutes were presented for consideration. As considerable variation was at once evident, a clear-cut definition became imperative. A reformatory for women, in view of Connecticut's needs, was defined as an institution established, maintained and controlled by the state to which delinquent women over the age of admission to the industrial school for girls may be committed by the courts having jurisdiction of their offenses, for the purpose of custodial care and reformation. Because of these limitations, i. e., state establishment, support and control; a minimum age of 16-18 years and court rather than voluntary commitment, three of the thirteen state laws were eliminated—Alabama and Oregon, because of the low age limits, and Nebraska, because of its voluntary commitment clause. The states whose statutes were finally selected for study were ten. They are, in the order of the dates of their legislation, with the names of the institutions established, as follows:

Indiana, 1869—Indiana Woman's Prison.

Massachusetts, 1874—Reformatory for Women.

New York, 1881—House of Refuge for Women (Hudson), now the New York State Training School for Girls; 1890—Western House of Refuge for Women (Albion); 1892—New York State Reformatory for Women (Bedford).

Iowa, 1900—Iowa Industrial Reformatory for Females.

New Jersey, 1910—New Jersey State Reformatory for Women.

Ohio, 1911—Ohio Reformatory for Women.

Pennsylvania, 1913—State Industrial Home for Women.

Wisconsin, 1913—Wisconsin Industrial Home for Women.

Maine, 1915—State Reformatory for Women.

Minnesota, 1915—State Reformatory for Women.

In spite of the fact that this legislation extends over a period of forty-six years, in states widely separated, with provisions differing in sequence and in type, the statutes show so close a similarity in gen-

⁴Since this date, Connecticut, Kansas, Michigan and Rhode Island have created state reformatories for delinquent women; North Carolina has established county and city industrial homes for fallen women.

eral structure that they may be said to have reached a standardized form. These provisions fall into six general divisions, relating to: I. Establishment or Enactment, II. Administrative Powers, III. Commitments, IV. Description of Institution, V. Release from Institution—Parole, Pardon and Discharge, and VI. Appropriations.

I. ESTABLISHMENT.

The terminology of the enacting clauses follows the usages of the several states, but the names of the institutions established are silent testimony to the growth of public opinion away from the demand for a prison for punishment to that for a home providing shelter and industrial training in preparation for self-supporting reinstatement in community life, with a name which shall carry as little stigma as possible—Prison, Reformatory, Industrial Home.

II. ADMINISTRATIVE POWERS.

The administrative powers of the reformatories are distributed by the statutes among three departments: A. Chief administrative powers; B. Superintendent, and C. Subordinates—officers and employees.

A. Chief Administrative Power.

The chief administrative power is vested in one of two general types of control, either in (1) Boards of Control or (2) Special Boards. As the Boards of Control have, in general, supervision of the reformatory, penal and charitable institutions of the states in which they have been created, any new correctional institution passes automatically under their jurisdiction. In spite of certain variations in the statutes, four of the ten states fall into this group—Iowa, Massachusetts, Minnesota and Wisconsin. Special, or individual, boards are created *de novo* and for the management of the one reformatory. Within this type, however, there are two variations, (a) the single board and (b) the double board. The single boards are intrusted not only with the selection of the site, the purchase of the grounds, the building and equipment of the institution, but with its subsequent management. Indiana and Maine alone belong to this group. The double boards share these duties, one—either a state department already created or appointed temporarily for the purpose—being empowered to prepare the reformatory for occupancy; the second, assuming control after its completion. Four states—New Jersey, New York, Ohio, and Pennsylvania—have such double boards, but all six provide the special individual board for the final management of the institution. The single boards are intrusted not only with the selection of the site, the purchase of the grounds, the building and equipment of the

institution, but with its subsequent management. Indiana and Maine belong to this group. The double boards share these duties, one—either a state department already created or appointed temporarily for the purpose—being empowered to prepare the reformatory for occupancy; the second, assuming control after its completion. Four states—New Jersey, New York, Ohio, and Pennsylvania—have such double boards, but all six provide the special individual board for the final management of the institution.

1. *Titles.*—The legal titles of these administrative boards are determined by state usage; "Board of Managers," however, has a majority of one over other titles used.

2. *Number.*—The number of members on the boards of control are small—one, three and five. The numbers on the special boards show wider range—from four to nine.

3. *Sex.*—The majority of the states legislate in favor of boards composed of both men and women in preference to those made up wholly of men or of women only. The proportion of women members ranges from one in five to three in nine. Indiana alone has an all-women board and only Ohio specifies that all shall be men.

4. *Appointment and Removal.*—Original appointments to these boards are made by the governors either with or without the consent of the senate or council. Indiana and Pennsylvania belong to the latter group, the remaining eight states make the advice or consent, or both, of the senate or council obligatory. Certain limitations, however, are imposed; e. g., that the appointees shall be residents of the state, that not more than a given number shall be of one political party or from one congressional district, or selected on a non-partisan basis. Indiana and Ohio specially provide that the members shall possess fitness for the position. Appointments to fill unexpired terms follow the rule of the original appointment with few exceptions. Of the seven statutes providing for the removal of members, four vest the power in the governor, but with the consent of the senate, and four specify that such removals shall be "for cause."

5. *Terms of Office.*—The terms of office range from three to nine years, depending, apparently, on the number of members on the board.

6. *Arrangement of Terms.*—Of the six statutes providing for this detail, five favor an annual change of one to three members and only one a biennial change.

7. *Organization.*—Two states omit any mention of the organization of the board. Of the remaining eight, seven give the members the

right to choose their officers from among themselves. Wisconsin alone gives the governor the right to appoint the chairman.

8. *Compensation*.—All of the state boards of control receive compensation for their members, ranging from six thousand to three thousand dollars per annum. Of the six special boards, three are unpaid and three paid, although two of the latter receive only nominal sums. All members receive necessary traveling expenses.

9. *Powers and Duties*.—Without exception, the statutes establishing reformatories for women specify in more or less detail the powers and duties of their boards of administration. These powers and duties, taken together regardless of source, fall under several heads—duties of a preliminary nature, powers relating to the property and fiscal concerns of the institution, powers relating to its general management and miscellaneous duties. The first section includes the duty to give bond and take the oath of office; the second, the power to select and acquire the site, by gift or purchase, to obtain options on adjoining property, have right of eminent domain, adopt plans, appoint superintendent of construction, let contracts (all over five hundred dollars to be advertised and awarded after competitive bidding and no member of the board to have financial interest in them), and to erect and equip the buildings. The third group is concerned with the general management of the institution after the reception of inmates. These include the following: have legal custody and control of the property, inmates and fiscal concerns; have general management of the grounds, buildings, officers and inmates; make rules and regulations for the care, support, discipline, education and employment of the inmates; provide a credit system for the inmates; give the inmates opportunity to converse privately with members of the board at least monthly; appoint and remove superintendent; fix the number, duties and salaries of subordinate officers and act as board of parole and discharge when not otherwise provided by law. The miscellaneous duties are to hold regular meetings, keep records, prepare estimates, make recommendations and annual or bi-ennial reports to the governor.

B. Superintendent.

1. *Appointment and Removal*.—All of the statutes provide that the superintendent shall be appointed by the chief administrative power. The method of removal, when specified in the law at all, is by the same agency. Three states insist that this removal shall be "for cause." The two states which also give the governor power to remove the superintendent, also specify that it shall be "for cause."

2. *Sex*.—The statutes, with one exception, specify that the superintendent of the women's reformatory shall be a woman. Massachusetts alone permits an executive of either sex.

3. *Powers and Duties*.—The preliminary duties of the superintendent are to give bond and to reside at the institution. Her duties in relation to the reformatory itself, as described by the statutes, are practically identical with those assigned to the administrative board because, as its legal agent, she becomes responsible for carrying out these provisions. A few of the laws specify in detail several miscellaneous obligations—to keep records of inmates, keep accounts, provide estimates of expenses, receive and disburse monies appropriated, sell products of institution, purchase supplies, render quarterly inventory of supply and make monthly reports.

C. Subordinate Officers and Employees.

1. *Appointment and Removal*.—In the appointment and removal of subordinates, the superintendents are given either (a) absolute freedom, or do so (b) subject to the approval of the governing board. Four of the statutes require the latter and six, apparently, give the superintendent a free hand with the exception of the steward in one state and the clerk in another. In two states the candidates must be examined for fitness before appointment. In another, the removal of subordinates for political activity is obligatory.

2. *Sex*.—Six of the state statutes specify the sex of subordinates. Of these six, four provide that all shall be women, one that those coming in contact with the inmates shall be women, and one women as far as practicable.

3. *Number and Titles*.—The number and titles of subordinates are determined in one of three ways, (a) by the administrative board (in five states), (b) by the superintendent subject to the approval of the board (in two states), or (c) by law (in three states).

4. *Salaries*.—The salaries of subordinate officers and employees are fixed either (a) by the board (in five states) or (b) by law.

5. *Duties*.—The duties of subordinates are prescribed either by (a) the administrative board (five states) or (b) by the superintendent.

III. COMMITMENTS.

The statutory provisions for the commitment of delinquent women to these institutions show slight differences as to the age at time of commitment, the powers of the courts having jurisdiction, the classes of offenders to be committed and the types of sentences to be given.

A. Age.

Five of the ten states fix a minimum age for commitment, but no maximum; one, "none under nine"; two, "over sixteen," and two, "over eighteen" years. Four, fix both a minimum and a maximum; one, seventeen to thirty, and three, sixteen to thirty. One statute alone, that of Massachusetts, fixes neither a maximum nor a minimum age limit.

B. Courts Having Jurisdiction.

The courts of jurisdiction differ according to the offenses for which women may be committed and are variously described in the statutes. In general terms, courts having jurisdiction over the offense are the courts of jurisdiction.

C. Powers of the Courts of Jurisdiction.

The powers granted to these courts by statute are of three kinds: (1) permissive powers, under which it is optional with the judge whether women convicted of violations of the law shall be sentenced to the reformatory or to other correctional institutions; (2) obligatory powers, under which convicted women can be sent only to the reformatory; (3) permissive and obligatory powers which give the court permissive powers in cases of certain offenses and in others allow it to act only within definite limits. Six states belong to the first group, two to the second and two to the third.

D. Classes to Be Committed.

Delinquent women, for the purpose of this study, are divided into two classes: Class A, made up of those convicted of felonies or of crimes punishable by imprisonment in the state prisons, and Class B, made up of those convicted of misdemeanors and punishable by imprisonment in the jails or other correctional institutions. All of the statutes under consideration provide for the commitment of women of both classes. Of these ten, only three place any restrictions on those belonging to Class A. New York accepts only those who have not served a previous term in state prison; Ohio bars out women convicted of murder in the first degree without recommendation of mercy and Wisconsin excludes women convicted of murder in the first, second, and third degree. Of the ten states providing for the admission of misdemeanants, four make restrictions. New York excludes those insane, or mentally or physically incapable of being benefitted by the institution; Indiana and Ohio, those serving less than a thirty-day sentence, and Wisconsin, all given short sentences less than one year. Five of the ten statutes specify the misdemeanors for which women may be committed; New York, petty larceny, vagrancy, habitual drunk-

enness, common prostitution, frequenting disorderly houses, or houses of prostitution, or any other misdemeanor; Massachusetts, drunkenness, simple assault, night walking, fornication, idle and disorderly conduct, keeping a disorderly house, lewdness, stubbornness, vagrancy and unlawful taking; Minnesota, petty larceny, vagrancy, habitual drunkenness, common prostitution, frequenting disorderly houses or houses of prostitution; Pennsylvania, includes street walking, and Wisconsin, vagrants, habitual drunkards, common prostitutes, drug-users or any misdemeanants.

E. Sentences.

Two types of sentences appear in the laws establishing reformatories for women in the United States—the determinate and the indeterminate. Although the statutes of the ten states use the term “indeterminate” in relation to the sentence of imprisonment to be imposed by the committing court, none of them in reality vests the judge with power to give a true indeterminate sentence—one with neither a minimum nor maximum of term stated. What is imposed is a term indeterminate within limits, either within a maximum or within a maximum and a minimum. Eight of the ten fix no minimum but a maximum term for women of Class B; five fix no minimum for either Class A or Class B; four fix both a maximum and a minimum, two for Class A only and two for both classes. Of the eight statutes fixing a maximum (no minimum) for Class B, two provide that the imprisonment shall be within the maximum already prescribed by law for the offense; one sets a maximum of five years; four, a maximum of three years and one state has two maxima for Class B, one of two years for misdemeanants except those guilty of drunkenness and the violation of the uniform desertion act, for which the maximum is one year. Of the five statutes providing a maximum for Class A, three accept the maximum prescribed by law for the offense and two make the limit of imprisonment five years. Of the four laws fixing both the maximum and minimum terms, the two which prescribe it for Class A only accept the limit already laid down for the offense, but differ as to the minimum; one, the legal limit and one a minimum of three years. Of the two specifying both limits for both classes of offenders, one accepts the legal maximum and minimum and one a minimum of one year and a maximum prescribed by law. Three of the states use both determinate and indeterminate sentences; Maine and Massachusetts use the determinate penalty if the punishment provided by law for the offense is for more than five years; Wisconsin leaves it optional with the court which of the two sentences shall be imposed..

F. Records and Warrants.

Taken together, the statutes provide for two kinds of records, (1) Records sent to the institution at time of commitment and (2) Institutional Records. All but two, specify more or less in detail the nature of both. New York requires that blanks shall be furnished by the institution for (1). The data required by the ten statutes taken together include the following: name, age, birthplace, nativity, nationality, parentage, residence, last address, occupation, education, previous life and surroundings, previous commitments, if any, and for what offense, particulars of offense committed, complete records of trial and statement of district attorney; name and address of persons who testified for and against at time of trial; names and addresses of presiding judge, district attorney and attorneys for defendant. Four states require that certain records shall be kept at the institution including records of methods of treatment employed, progress and subsequent history of inmates.

G. Notification of Commitment.

Four statutes provide that the courts shall give notices of commitment to the institution.

H. Attendants.

1. Sex.—Of the five states in which the sex of the attendants is specified, four require women, one the sheriff.

2. Source—These attendants are provided either (a) by the county or court in which the woman is sentenced (two states), or (b) by the institution (three states).

I. Provisions for Children of Women Committed.

Four of the ten statutes make provisions for the children of women committed to the reformatory: (1) Children under one year (Massachusetts, eighteen months) may be kept in the institution until two years of age, when they must be removed and properly cared for at the expense of the state or placed with a relative or suitable person until the release of the mother. These provisions also apply to children born after commitment. (2) Three of the laws make it obligatory on the courts to provide in similar ways for children over one year who are without proper guardianship.

J. Transfers between Reformatory and Other Institutions.

All of the states, with one exception, provide a system of transfer of inmates between the reformatory and other state institutions; these include the state prisons, jails, workhouses, and other penal institutions, girls' industrial schools, insane and other hospitals, state

institutions for the feeble-minded, court of original jurisdiction when improperly committed and others.

IV. DESCRIPTION OF INSTITUTION.

A. Purpose.

The purpose of the institution is defined more or less briefly in all of the laws except one. Custody, preservation of health, reformation of character, education for self-support and the prevention of young offenders from becoming hardened criminals are given as the purpose of the reformatory treatment.

B. Acreage.

The acreage to be provided for the institution is specified in seven states and purchased as follows: Indiana, 15.61 acres; Iowa, 218.8; Maine, not less than 200 acres; Massachusetts, one acre for cemetery; Minnesota, 165 acres; New Jersey, one acre for cemetery; New York, House of Refuge (Albion), 92.57 acres, Reformatory (Bedford), 195.5 acres; Ohio, not over 300 acres; Pennsylvania, not less than 100 nor more than 500 acres; Wisconsin, not specified.

C. Description of Land.

Four laws fail to place any limitations on the kind of land to be purchased. Two state that it shall be suitable, a third that it shall be within five miles of the state capitol, while three of the more recent statutes safeguard the purchase; Maine requires that part of the land shall be arable to the end that so far as practicable the food for the inmates may be produced on such land; Minnesota, that healthfulness of location, character and quality of the soil, drainage, water supply, convenience to railroad transportation and to the needs of the state shall be taken into consideration; Pennsylvania requires similar conditions.

D. Buildings.

Three of the more recent statutes specify that the buildings shall be constructed on the cottage system—Maine, Minnesota and Pennsylvania; Massachusetts, that they shall be of brick construction.

E. Notification of Opening of Institution.

Of the six states making provision for this detail, three specify that it shall be done by the proclamation of the governor, and three, by the managing board.

F. Preliminary Examination.

Only two statutes include any clause relating to the physical or mental examination of the delinquent women committed to the institution. Massachusetts requires the Bertillon record in cases of women

convicted of felony. Wisconsin provides that special attention shall be given to women afflicted with venereal diseases.

G. Classification.

Only three of the states fail to specify that a classification of inmates shall be made. Seven make such classification obligatory.

H. Education.

Nine of the ten laws provide specifically for the education of the inmates. Six forms of instruction are mentioned: moral, mental—including common school branches—professional, vocational—including domestic science, mechanical arts and useful trades—manual and physical.

I. Employment.

Eight of the nine states make statutory provisions for the employment of the inmates; Maine specifies that the employment shall be for the purpose of teaching useful trades; New York, that compensation may be given the inmates; Massachusetts and Pennsylvania allow no contract labor.

V.—RELEASE FROM INSTITUTION.—PAROLE, PARDON AND DISCHARGE.

A. Parole.

1. *Power of Parole.*—The power of parole is vested in, either:

(a) Boards of Parole, exercising similar rights for other correctional institutions, or (b) the administrative board of the reformatory. Seven states belong to the latter group and three to the former. In Indiana, the superintendent, acting as chairman, with the board, the chaplain, physician and clerk, constitute the board of control. New Jersey and Ohio also require the recommendation of the superintendent, and New York permits the judge of the court, if he so requests in writing, to act temporarily as a member of the paroling board in the case of any woman committed by him.

2. *Conditions.*—Seven of the statutes specify one or more conditions on which parole may be granted. Of these, four lay stress on the institutional record; three, on the reasonable probability that the inmate will be law-abiding; two, that suitable employment shall have been secured in advance; one, that money and clothing shall be provided, if necessary.

3. *Agents.*—Only four of the ten states provide in this group of statutes for parole agents.

4. *Violation of Parole.*—Eight of the laws specify penalties for the violation of parole, and all of them agree in making return to the reformatory the penalty. Six states provide that the unexpired term shall be served after return; three date this term from the time

of the revocation of parole, two from the time of release on parole and one state adds a two-year penalty to the return.

5. *Returning Agency*.—Seven statutes provide that returns may be made on warrants issued by the administrative board, and two that officers of the reformatory may arrest without warrants.

B. Pardon.

Five states recognize in the statutes under consideration the pardoning power of the governor in connection with the release of women from the reformatories; two give him unqualified freedom; two vest the power in the governor on recommendation of the board of control and one in the governor with the consent of his council.

C. Discharge.

Six states provide for discharge from the jurisdiction of the reformatory prior to the expiration of the legal term. Two require as a condition of discharge, acceptable service of one year on parole, another, a satisfactory parole record, the recommendation of the superintendent and vote of the board; New York, the vote of the board, and Pennsylvania, the recommendation of the superintendent and physician, endorsed by the board of managers and approved by the judge of the committing court after conference with the district attorney.

VI. ORIGINAL APPROPRIATIONS.

The original appropriations provided by law for the establishment of these ten reformatories show a wide range as follows: Iowa, \$2,500 (for refitting old building); Maine, \$20,000 (1915), \$30,000 (1916); Minnesota, \$30,000; Wisconsin, \$35,000; Indiana, \$50,000; New York, \$130,000 (Albion), and \$100,000 (Bedford); Ohio, \$100,000; Pennsylvania, \$250,000; Massachusetts, \$300,000; New Jersey, \$20,000 (for land), and Wisconsin, \$35,000 (1913), \$25,000 (1924), \$100,000 (1914), \$65,000 (1915).

SUMMARY.

To summarize, the frame-work of a bill for establishing a state reformatory for delinquent women, if based upon the digest of all the laws so far (January, 1917) enacted in the United States, would incorporate the following general structure and provisions.

General Structure: I. Establishment. II. Administrative Powers. III. Commitments. IV. Description of Institution. V. Release from Institutions. V. Appropriations.

I. Establishment.

Enactment clause—follows state usages.

Name—short, concise and carrying as little stigma as possible; "Reformatory" giving way to "Industrial Home."

II. Administrative Powers.

A. Chief administrative power—Boards of Control or state departments already created to be used when possible; otherwise, a single board for the establishment and control of the new institution.

1. Title—Determined by state precedent.
2. Number—Boards of Control, 1-5; individual boards, 4-9 (slight preference shown for 5).
3. Sex—Both men and women; at least $\frac{1}{3}$ to be women.
4. Appointment and removal—
Original appointment—By governor, with or without consent of senate, for fitness, on non-partisan basis and within 30-60 days.
Appointment to vacancies—By governor, for unfinished term.
Removal—By governor, "for cause," with or without consent of senate.
5. Terms—3-9 years.
6. Arrangement of terms—So that changes of as few members as possible shall occur annually rather than biennially.
7. Organization—Self organizing, appointing their officers from among themselves.
8. Compensation—Boards of Control paid; individual boards, unpaid or receiving only nominal salary; and expenses necessarily incurred in performance of duty.
9. Powers and Duties—Select site; acquire land, by gift or purchase; prepare plans; let contracts, all over \$500 to be advertised and no member of the board to have a financial interest in them; build and equip; have custody of property and inmates; appoint superintendent; fix titles, number, and salaries of subordinates (including deputy superintendent, resident woman physician, clerk and steward) unless otherwise specified by law; make rules and regulations for the care, support, discipline, detention, education and employment of inmates including domestic science and useful trades; provide credit system; keep records; hold regular meetings; make annual reports and recommendations to the governor; act as board of parole and discharge unless otherwise provided by law.

B. Superintendent.

1. Appointment and removal—Appointed by board; removed by board "for cause."
2. Sex—Must be a woman.

3. Powers and duties—Give bond; reside at institution; subject to the board make rules and regulations for the internal administration of the institution; determine number, select (after examination for fitness), assign duties, appoint, and remove subordinates; keep records; prepare estimates and make reports.

C. Subordinates.

1. Appointment and removal—By superintendent subject to approval of board.
2. Sex—Women, as far as practicable.
3. Number and titles—Determined by superintendent and board, or by law.
4. Salaries—Fixed by the board or by law.
5. Duties—Determined by superintendent with approval of board.

III. Commitments.

- A. Age—Over that of admission to girls' industrial schools (16-18); no maximum age limit.
- B. Courts having jurisdiction—Courts of the state or the United States having jurisdiction over the offense.
- C. Powers of the courts having jurisdiction—Permissive or obligatory.
- D. Classes to be committed—A. Women convicted of felonies; B. Women convicted of misdemeanors including drunkenness, drug-using, disorderly conduct and prostitution, except those of both classes incapable of being benefitted physically, mentally or morally.
- E. Sentence—Indeterminate within maximum prescribed by law for the offense; no minimum to be specified.
- F. Records and Warrants—
 1. To be sent with warrant to institution (on blanks furnished by the reformatory) name, age, birthplace, parentage, last address, occupation, education, previous life and surroundings, previous commitments, if any, and for what offense, particulars of last offense, including record of trial with names and addresses of witnesses, names and addresses of presiding judge, district attorney and attorney for the defendant.
 2. To be kept at institution—in addition to above, condition on admission, plan of treatment, regular record of development, circumstances of final release and subsequent history.
- G. Notification of commitment—Shall be made by court to the institution.
- H. Attendants—Sex, women; to be provided by institution.
- I. Provisions for children of women committed—

1. Under one year (or born after commitment)—may be admitted and retained in the institution until two years of age, when they must be removed and cared for by the board or proper agency.
2. Over one year—Must be provided for by courts if without proper care.

J. Transfers—Free system of transfers to be provided for between the reformatory and the state prisons, jails, work-houses, girls' industrial schools, insane and other hospitals, institution for feeble-minded, other institutions and back to the court of original jurisdiction when improperly committed.

IV. Description of Institution.

- A. Purpose—Custodial care for the preservation of the health, reformation of character, education for future self-support and prevention of young offenders from becoming hardened criminals.
- B. Acreage—Not less than two hundred acres.
- C. Description of land—Character of soil (land to be arable so that so far as practicable food for the inmates may be produced), drainage, water supply and accessibility to be taken into consideration.
- D. Buildings—On the cottage plan.
- E. Notification of opening of institution—By governor or board.
- F. Preliminary physical and mental examination—To be provided.
- G. Classification of inmates—Obligatory.
- H. Education—Religious, mental, including instruction in common school branches, professional, vocational, including domestic science and useful tasks, manual and physical to be provided.
- I. Employment—Industries to be provided for the teaching of useful trades.

V. Release from the Institution.

A. Parole—

1. Paroling power—Board of parole of institution, unless otherwise provided by law, on recommendation of superintendent.
2. Conditions—Good physical condition, reform as indicated by institutional record; reasonable probability that inmate will be law-abiding, ability to earn an honest living, suitable employment secured in advance, transportation, suitable clothing and small sum of money to be provided when necessary.
3. Parole agents—To be provided by institution.
4. Violation of parole—
Penalty—Return to institution to serve unexpired term.

Agency—On warrants issued by board; agents of reformatory to have right of arrest without warrants.

B. Pardon—Pardoning powers of governor conserved.

C. Discharge—Satisfactory parole record, recommendation of superintendent and unanimous vote of board, the conditions.

VI. Appropriations—Sufficient to purchase site and erect administration building and pay running expense with the next session of the legislature.

This group of statutes which has been under consideration represents the women's reformatory movement in the United States from 1869-1916 in terms of actual legislation. Just how far this incorporates the demands of the penologist and the social reformer it is of value to ascertain. Accepting the printed reports of the proceedings of the National Prison Association and of the Conferences of Charities and Correction as representing progressive intelligent thought on the subject of institutional care of delinquent women, we find a steady emphasis and a fairly uniform agreement as to certain desiderata; an institution whose spirit and purpose is remedial and reconstructive rather than punitive, working for the speedy return of the offender to community life as a healthy, law-abiding and self-supporting member; non-partisan management; high grade officials; the commitment of all women now sent to jails and workhouses except those insane, feeble-minded and epileptic; an indeterminate sentence, without maximum or minimum, permitting the permanent segregation of those incapable of being benefitted by reformatory treatment; adequate social records as a basis for reformatory treatment; thorough physical and mental examination and treatment, including the Wasserman and Binet-Simon tests; classification of inmates according to types; the cottage plan; open air life; educational facilities, corresponding to those of the public school systems in common school branches and industrial training including domestic science; a system of employment planned primarily for the teaching of useful trades rather than for securing remuneration for the institution, contract labor being abolished; adequate recreational facilities; a credit system for inmates; and the parole system, parole agents to be provided during the period of conditional release.

A comparison of these demands with the provisions of the statutes analyzed show, on one side, complete or partial response, and on the other, several points still unattained. As only one of the statutes fails to define the purpose of the institution it establishes, and that pur-

pose when stated is reconstructive in character, women's reformatory legislation may be said to be uniformly based on the principle that the best protection of society is gained through the reformation rather than by the punishment of the offender. Parole as an integral part of the reformatory system is also uniformly recognized; only four of the ten laws, however, specifically provide for parole agents in connection with this institution. Before charging the majority of the statutes with failure to recognize these essentials, the fact that many states supply such agents through other forms of legislation should be taken into consideration. All of the ten states have gone on record as accepting the indeterminate sentence in theory, although in actual practice none legalizes such a sentence without a maximum limit; thus the permanent quarantine of the moral imbecile—a goal especially desired by the social reformer—is still unattained. The fact, however, that eight of the ten laws permit the indeterminate sentence without a minimum points toward future possibilities. Educational facilities for the inmates are provided by law in nine of the ten states, seven specifying more or less in detail that instruction shall include common school branches and industrial training. Eight states require some form of employment as a reformatory agency, but only one that this shall be for the purpose of teaching a useful trade, and in only one other statute is contract labor in the reformatory definitely prohibited. Eight of the ten laws require the institution to be supplied with social records, but only half of these indicate sufficient data to serve as a basis for reformatory treatment. Only two provide by statute for any form of physical examination or treatment and not one for a mental analysis, indicating that in this particular, at least, the laws are less sensitive to the demands of penology. In spite of the fact that seven states make classification of inmates obligatory, but four specify that the institution shall be built on the cottage plan and only four out of the seven specifying the acreage require a sufficient amount to secure the open air farm life so desired. Only two of the ten state laws make obligatory the commitment of delinquent women to the reformatory instead of to the jails and workhouses, so that in this particular legislation falls far short of the demand of the social reformer. An attempt to secure non-partisan management is made in several of the laws, but in only two are the standards for the officials specified. Only one institution is required to establish a credit system for the inmates and in none is there any mention of recreation as a reformatory agency. Yet in spite of the fact that women's reformatory legislation has failed to incorporate all the demands of the penologist and

of the social worker for detailed provisions for adequate physical and mental examination, the cottage plan, large acreage, the credit system, non-partisan management, recreational facilities and the compulsory commitment of all delinquent women, it has, on the whole, embodied the essential requirements of a reconstructive rather than a punitive policy; parole, classification of inmates, social records, facilities for education and employment and the principle, if not as yet the actual practice, of the indeterminate sentence. The legislation of the second period of the women's reformatory movement, i. e., from 1910 to 1915, shows so much more susceptibility to these demands than did the earlier group that there is reason to believe that the enactments of the near future will show even greater strides toward the ideal legislation.

DIGEST OF LAWS ESTABLISHING REFORMATORIES FOR WOMEN IN THE UNITED STATES.

Prepared for the Committee on Delinquent Women of the
Connecticut Prison Association.

By

MARION CANBY DODD AND HELEN WORTHINGTON ROGERS.
Sub-Committee on Scope.

CONTENTS OF TABULATION.

I. Establishment—

(All states that, up to January, 1917, have created reformatories for women, viz.: Indiana, Iowa, Maine, Massachusetts, Minnesota, New Jersey, New York, Ohio, Pennsylvania, Wisconsin.)

Page 538. (All states.)

1. Date established. 2. Citations. 3. Name of institution.

II. Administrative Powers—

A. Chief Administrative Power. (All states.)

Page 539. (All states.)

1. Name. 2. Number. 3. Sex. 4. Appointment and removal.
5. Terms, length of.

Page 540. Chief Administrative Power—Continued. (All states.)

1. Arrangement of terms. 2. Organization. 3. Compensation.

Page 541. Chief Administrative Power—Continued. (All states.)

1. Powers and duties of Board of Trustees, etc.

B. Superintendent.

Page 542. (All states.)

1. Appointment and removal. 2. Sex. 3. Powers and duties
of superintendent.

C. Subordinate Officers.

Page 543. (All states.)

1. Appointment and removal. 2. Sex. 3. Number and titles.
4. Salaries. 5. Duties of subordinate officers.

III. Commitments—

Page 544. (All states.)

1. Age.
2. Courts having jurisdiction.
3. Powers.
4. Classes to be committed.

Page 545. Commitments—Continued. (All states.)

1. Sentences.
2. Records and warrants.
3. Notification of commitment.

Page 546. Commitments—Continued. (All states.)

1. Attendants after commitment, (a) sex, (b) provided by.
2. Provisions made for children of prisoners when commitment has been ordered, (a) for children under one year old, (b) for children over one year old.

Page 547. Commitments—Concluded. (All states.)

1. Transfers.

- (a) To reformatory from other institutions.

- (b) From reformatory to other institutions.

IV. Description of Institution—

Page 548. Description of Institution. (All states.)

1. Purpose of institution.
2. Acreage.
3. Description of land.

Page 549. Description of Institution—Continued. (All states.)

1. Buildings.
2. Notification of opening of institution.
3. Preliminary examination, (a) physical, (b) mental.

Page 550. Description of Institution—Concluded. (All states.)

1. Classification of inmates.
2. Education, general and vocational.
3. Employment.

V. Release from Institutions—

A. Parole, violation of parole, escape, pardon.

Page 551. (All states.)

1. Parole, (a) paroling power, (b) conditions, (c) agents.

Page 552. (All states.)

1. Violation of parole (and escape), (a) penalty, (b) returned by.
2. Pardon.

Page 553. (All states.)

1. Discharge, (a) conditions.

VI. Original Appropriations—

NOTES.

1. The asterisk in the following pages indicates that the law does not specify as to the subject of the column in which the sign occurs.

2. This digest does not attempt to cover all of the provisions of all laws under consideration, but only their more essential features.

3. The year, 1881, is the date of establishment of the House of Refuge at Hudson, N. Y., which in 1904 became the N. Y. State Training School for Girls. (See p. 538).

4. Digits in parenthesis in the following tabulation are for purposes of identification; e. g., on p. 539 (Minn.) all data preceded by (1) relate to the State Board of Control.

5. "The(ir) constitutionality of *these laws* has never been seriously questioned, and there has been no litigation relating thereto. * * * There have in a few instances been questions relating to construction of certain provisions of the act, but nothing of material interest." (From Henry F. Parmelee, Counsellor at Law, New Haven, to Mrs. Helen W. Rogers).

State.	Date Established.	Citations.	Name of Institution.
IND.	1869	Revised Statutes, 1914, Vol. IV, Chap. 124, Art. 4; R. S. 1914, Sec. 3435, 3438, etc.	Indiana Woman's Prison.
	1900	Supplement, Code of Iowa, 2713-a-n; 2713-ni-19.	Iowa Industrial Reformatory for Females.
IOWA	1915	Revised Statutes, 1916, Chap. 142, Sec. 56-71.	Reformatory for Women.
MAINE	1874	Acts 1874, Chap. 385. R. L. 1902, Chaps. 222 and 225. Acts 1911, Chap. 181. Acts 1912, Chap. 380. Acts 1913, Chap. 829. Acts 1914, Chap. 635. Gen. Acts 1916, Chap. 241.	Reformatory for Women.
MASS.	1915	Chap. 324. Laws, 1916, Chap. 324.	State Reformatory for Women.
MINN.	1910	Compiled Statutes, 1709-1910, pp. 4933-4938. Acts 1912, Chap. 87. Statutes 1913, p. 15. Acts 1915, Chap. 269.	New Jersey State Reformatory for Women.
N. J.	1881 (a) (1) 1890 (2) 1892	State Charities Law (Chap. 57, Laws 1909, constituting Chap. 55, Consolidated Laws) §§220-223, as amended y Chaps. 149, 258, Laws 1909; Chap. 449, Laws 1910; Chap. 605, Laws 1913. Penal Law (Chap. 88, Laws 1909, constituting Chap. 16, Cons. Laws) §690, State Fin. Law (Chap. 56 Cons. Laws).	(1) Western House of Refuge for Women (at Albion). (2) New York State Reformatory for Women (at Bedford).
N. Y.	1911	Acts 1911, Sec. 2148-1-11. Amended Acts, 1914-1915, pp. 130-132.	Ohio Reformatory for Women.
OHIO	1913	Acts 1913, No. 816. Acts 1915, amended and supplemented, No. 120.	State Industrial Home for Women.
PENN.	1913	Acts 1913, Ch. 723.	Wisconsin Industrial Home for Women.
WIS.			

A. CHIEF ADMINISTRATIVE POWER.

State.	Name.	No.	Sex	Appointment and Removal.	Terms.
IND.	Board of Trustees	4	All women.	*	4 years
	Board of Control of State Institutions.	8	All men.	Appointed by governor with advice and consent of Senate (not more than two of same political party; no two of same congressional district). Removed by governor with consent of Senate.	6 years
IOWA	Board of Trustees.	5	At least two shall be women.	Appointed by governor with advice of Council (must be inhabitants of state). Vacancies filled in same way. Removed by governor and Council for cause.	5 years
MAINE	Director of Prisons.	1	*	Appointed by governor with advice and consent of Council. Removed in same way.	5 years
MASS.	(1) State Board of Control (established by previous legislation).	(1) 3	(1) Men.	(1) Appointed by governor with consent of Senate. Vacancies filled in same way. Removal by governor for cause (including political activity).	(1) 6 years
MINN.	(2) Board of Women Visitors (established by previous legislation).	(2) 5	(2) Women.	(2) Appointed by governor.	(2) 1 year
	(1) Board of Commissioners of the New Jersey State Reformatory for Women.	(1) 8	(1) Not less than three shall be women.	(1) Appointed by governor with advice and consent of Senate (within 30 days). Vacancies filled in the same way. Removed by governor for cause.	(1) 3 years
N. J.	(2) State House Commission (established by previous legislation).	(2) 3	(2) Men.	(2) Governor, comptroller of the treasury and the treasurer.	(2) 3 years
N. Y.	(1) Board of Managers.	7	Either sex, but at least two shall be women.	Appointed by governor with advice and consent of Senate. Vacancies filled by governor. Removed by governor for cause after hearing.	7 years
OHIO	(2) Commission on Sites, Grounds and Buildings (abolished by previous legislation).				
	(1) Site and Building Commission.	(1) 4	(1) Men.	(1) Governor, secretary of state, auditor of State and secretary of State Board of Charities.	(1) *
PENN.	(2) Board of Administration.	(2) 4	(2) *	(2) Appointed by governor with advice and consent of Senate (not more than two of same political party; must be selected for qualifications of special study, knowledge and experience). Vacancies filled by governor. Removed by governor.	(2) 4 years
	(1) Building Commission for a State Industrial Home for Women.	(1) 5	(1) *	(1) Appointed by governor (immediately after passage of act).	(1) Temporary.
WIS.	(2) Board of Managers.	(2) 9	(2) Three shall be women.	(2) Appointed by governor.	(2) 3 years
	State Board of Control of Wisconsin (has control of all reformatory, charitable and penal institutions of the state).	5	Including one, who shall be a woman.	Appointed by governor with consent of Senate.	5 years

State.	A. CHIEF ADMINISTRATIVE POWER.		
	Arrangement of Terms.	Organization.	Compensation.
IND.	1 for 2 years, 1 for 4 years, 1 for 6 years, until expiration of term of first member (original plan for 8 members).	Appoints one of its own members as president, one as vice-president, one as secretary and one as treasurer.	\$300 per annum each and traveling expenses not to exceed \$125 a year each.
IOWA	1 for 2 years, 1 for 4 years, 1 for 6 years, until expiration of term of first member.	Chairman to be the member whose term first expires.	\$3,000.00 per annum and traveling expenses.
MAINE	Term of one member to expire annually.	Members appoint president and secretary from among themselves.	\$5.00 a day when actually in service of institution and expenses necessarily incurred.
MASS.	*	*	\$6,000 per annum.
MINN.	*	(1) Member whose term first expires, to be chairman. (2) *	(1) \$4,500 per annum. (2) Only expenses necessarily incurred in performance of duties.
N. J.	(1) 2 for 1 year, 2 for 2 years, 2 for 3 years. Thereafter, 2 members annually for 3 years.	(1) Appoint from its own members a president, vice president, secretary and treasurer.	None.
N. Y.	(1) Term of one member to expire annually.	(1) Appoints from its own members, a president, secretary and treasurer.	(1) None; allowed necessary expenses in attending meetings.
OHIO	(1) * (2) Appointment for 1, 2, 3 and 4 years respectively. Thereafter, one annually.	(1) * (2) Must organize within 30 days.	(1) Traveling and other expenses necessarily incurred. (2) \$5,000 per year and necessary traveling expenses.
PENN.	(1) * (2) 3 for 3 years (one a woman); 3 for 2 years (one a woman); 3 for 1 year (one a woman). Thereafter, 3 annually for 3 years.	(1) Must elect chairman and treasurer from its own members within 30 days. (2) Elects annually a president and treasurer from its own members.	(1) Expenses actually incurred in performance of duties. (2) Same as (1).
WIS.	*	President appointed by governor. All other officers elected by the board itself.	President, \$3,600 per annum; other members, \$2,500.

A. CHIEF ADMINISTRATIVE POWER—(Continued).

POWERS AND DUTIES.

Possess fitness for position; give bond; right to condemn property for necessary purposes; make contracts after competitive bidding, but no member of Board to have financial interest in contracts; have legal custody and supervision of institution; give sufficient time and attention to secure its efficient management; appoint and remove (for cause) superintendent; determine number, duties and salaries of subordinates; conduct institution on non-partisan basis; make annual reports to governor.

Take oath of office, select site, construct building; notify courts when ready for occupancy, also when capacity is reached; appoint superintendent; determine number of officers; fix salaries with approval of governor and uniform with similar state institutions; prescribe duties; make provisions for government, discipline and control of institution; visit monthly; investigate abuses; keep records; prepare estimates of appropriations.

Select and purchase site (subject to approval by governor and Council); adopt plans; appoint superintendent of construction; make contracts (all above \$500 to be advertised); erect and furnish buildings; appoint superintendent and fix all salaries; have general superintendence, management and control of grounds, buildings, officers and inmates; make rules and regulations; act as board of parole and discharge; issue warrants; report annually to governor and Council.

Appointment of superintendent; general supervision of institution; making of rules for direction of officers, for government, discipline and instruction of inmates; for custody and preservation of property connected with institution; visits at frequent intervals; transfer of prisoners to and from reformatory; keeping informed as to management and discipline of institution; determination of industries which shall be established and maintained. (Acts 1874, power to select and determine plan, make contracts and purchase eligible site in commonwealth and to cause to be erected thereon suitable buildings, all subject to approval of governor and Council.)

(1) Invite proposals for site; select and acquire site (by gift or purchase); prepare plans and estimates; submit latter, with recommendations, to legislature of 1917; have financial and general supervision of institution as hitherto provided by law; appoint superintendent, officers and employees; prescribe duties; fix compensation; make and establish rules and regulations for government and management of institution and education, employment, training, discipline and safe-keeping of inmates; visit at least once in six months; inspect thoroughly; report bi-annually to governor; provide estimates and suggestions for benefit of institution and "for improving the conditions of criminal classes."

(2) Advise with Board of Control with reference to architecture and arrangements of buildings; style and character of furnishings, fixtures and other matters deemed necessary by Board of Control; visit institution when nearing completion and thereafter at least twice annually to inspect buildings, examine conditions, sanitary and otherwise; inquire into treatment and condition of women, examining separately; report after each visit, in writing, to Board of Control, with recommendations to promote and conserve best interests of said reformatory and inmates.

(1) Select site; make plans; manage and control property; establish system of government; make rules and regulations for care, support, discipline, detention, education and employment of inmates; appoint superintendent; fix number, duties and salaries (within legal limits) of all subordinates; hold monthly meetings at institution; efficiently inspect institution; keep records; make annual reports to governor, financial and general; act as board of parole and discharge; take oath of office.

(2) Approve plans of (1); erect buildings by contract; turn over latter to (1) when complete.

General superintendence, management and control of institution; of grounds, buildings, officers, employees and inmates; of all matters relating to the government, discipline, contracts and fiscal concerns; make rules and regulations; constitute board of parole; have power to parole and discharge inmates.

(1) Select site; purchase land; obtain options on adjoining land; adopt plans and specifications; prepare estimates; let contracts; build and place institution in readiness for use.

(2) Have control and management of institution; assume all duties and obligations of (1); appoint superintendent; fix salaries of all officers and employees; act as board of parole and discharge.

(1) Select and purchase site; have power of eminent domain; prepare plans and specifications, build and equip; let contracts (after competitive bidding); appoint superintendent of construction and fix compensation; when completed, to turn over buildings and management to (2).

(2) Have sole charge and management of institution; approve contracts for equipment; let-out contracts after competitive bidding; appoint superintendent; fix compensations; make rules and regulations for care, detention, employment and education of inmates; provide credit system for inmates; give opportunity for inmates to converse privately with one of managers monthly; parole and discharge inmates (charge expenses of each inmate to county from which sentenced).

Select site (to be approved by governor); erect necessary buildings; have general supervision, control and government of institution; appoint superintendent and steward; determine number of officers and fix all salaries; maintain system of training and instruction in trade and domestic science; to create industries; make rules for parole and discharge.

State.	B. SUPERINTENDENT.		
	App'tment and Removal.	Sex.	Powers and Duties.
IND.	Appointed by Board of Trustees.	Must be a woman.	Give bond for \$10,000; reside at institution; have charge and custody of buildings and inmates; appoint (after examination for fitness) or remove, subordinates; govern in accordance with rules of Board; provide estimates of expenses; keep full records of prisoners.
IOWA	Appointed by Board of Control.	Must be a woman.	Have immediate management of institution under Board of Control; appoint all subordinates; provide instructors, etc.; render quarterly inventory of supplies; make monthly reports.
MAINE	Appointed and removed by Board of Trustees.	Must be a woman.	Subject to Board of Trustees. 1. Have general supervision and control of buildings, officers, employees and inmates; 2. Make rules for government of institution and for employment, discipline and education of inmates; 3. Such other duties as the Board may direct; 4. Appoint and remove all subordinates; keep records of inmates.
MASS.	Appointed and removed by Director.	May be man or woman.	Give bond for \$10,000, to be approved by Director; reside at all times at reformatory; have custody and control of prisoners; govern and employ them according to law; have management and direction of prison and its employees; receive and disburse money appropriated; purchase supplies; keep accounts; keep records of inmates.
MINN.	Appointed by Board of Control. May be removed for misconduct, incompetency or neglect of official duty.	Must be a woman.	Prescribed by Board of Control.
N. J.	Appointed by Board of Commissioners; may be removed by Board or governor for cause.	Must be a woman.	Give bond for \$10,000 to be approved by Board and filed with secretary of state; reside in institution; appoint and remove subordinates; have care, custody and control of prisoners; govern and employ according to law; make purchases subject to approval of Board; sell products of institution and turn over funds to state treasurer; keep records; make monthly reports to Board.
N. Y.	Appointed by Board of Managers. Removed by Board; or by governor for cause after hearing.	Must be a woman.	Subject to direction and control of Board of Managers. 1. Have general supervision and control of grounds, buildings, officers, employees, inmates, and of all matters relating to government and discipline. 2. Make rules and regulations necessary to carry out (1) and for the employment, discipline and education of inmates. 3. Exercise other powers and perform such other duties as the Board prescribe; appoint and remove all subordinates (subject to approval of Board).
OHIO	Appointed by Board of Administration.	Must be a woman.	Appoint and remove subordinates, specify duties, with exception of clerk who shall keep accounts and report to Board of Administration at its regular meetings.
PENN.	Appointed and removed by Board of Managers.	Must be a woman.	Under direction and control of Board, appoint and suspend subordinates, the latter subject to ratification by Board.
WIS.	Appointed by State Board of Control.	Must be a woman.	Have direct charge of institution and all property belonging to it; have control and discipline of inmates and employees; select assistant superintendent and all other subordinates (except steward) subject to approval by Board.

C. SUBORDINATE OFFICERS.

State.	Appointment and Removal.	Sex.	Number and Titles.	Salaries.	Duties.
IND.	By superintendent.	Women.	Determined by Board of Trustees.	Fixed by Board.	Prescribed by Board.
	By superintendent.	*	Determined by Board of Control.	Fixed by Board within legal limits.	Prescribed by Board.
MAINE	By superintendent.	*	Determined by superintendent under direction of Board of Trustees.	Fixed by Board.	Determined by superintendent consistently with rules of Board.
MASS.	By superintendent.	Women.	Deputy superintendent, chaplain, physician, clerk, not over 26 matrons. One officer may be designated as assistant deputy. Extra officers may be employed to carry out purpose of law relative to hours of labor.	Fixed by law; also hours of labor.	Determined by superintendent.
	Appointed and discharged by superintendent except purchasing agent: must be removed for political activity or accepting gifts.	All women.	Determined by Board of Control.	Fixed by Board of Control uniform with similar state institutions.	Determined by Board of Control.
N. J.	By superintendent subject to approval of Board of Commissioners.	Women.	Specified in law: deputy superintendent; chaplain, physician, clerk and necessary matrons, determined by Board.	Fixed by Board within legal limits (also wages and hours).	Determined by superintendent according to general rules of Board.
N. Y.	By superintendent subject to approval of Board of Managers.	Women, if coming in contact with inmates.	Fixed by Board of Managers.	Fixed by Board according to legal schedule.	Determined by superintendent.
OHIO	By superintendent.	Women as far as practicable.	Determined by law: assistant superintendent, physician-and-chaplain, teachers, clerk and other necessary employees.	Fixed by Board.	Determined by superintendent (except clerk) subject to general rules of Board.
	By superintendent, subject to approval of Board, but each must be strictly examined as to moral character and fitness to care for and instruct inmates.	*	Determined by superintendent subject to approval by Board.	Fixed by Board.	Determined by Board.
PENN.	By superintendent with approval of Board of Control.	*	Determined by Board of Control.	Fixed by Board.	Determined by Board.
WIS.					

State.	Age	Courts Having Jurisdiction.	Powers of Courts.	Classes to be Committed.
IND.	Over 18 yrs.	Courts of competent jurisdiction. i. e., criminal, police and petty courts.	Obligatory for class A and part of B. Permissive for part of Class B.	A. Women convicted of crimes punishable by imprisonment in the state prison. B. Women convicted of offenses punishable by imprisonment for more than 90 days; 30-90 days permissive; none under 30 days.
IOWA	None under 9 yrs.	District or any inferior court.	Obligatory.	A. Women convicted of felony. B. Women convicted of misdemeanors.
MAINE	Over 16 yrs.	Courts of the state or U. S.	Permissive (whether determinate or indeterminate sentence is to be given).	A. Women convicted of crimes punishable by imprisonment in the state prison. B. Women convicted of offenses punishable by imprisonment in county jails or other correctional institutions.
MASS.	#	Courts of Massachusetts and of the U. S.	Permissive under 2½ years. Obligatory over 2½ years.	A. Women convicted of felony. B. Women convicted of misdemeanors, including drunkenness, simple assault, night walking, fornication, idle and disorderly conduct, keeping disorderly house, lewdness, stubbornness, vagrancy and unlawful taking.
MINN.	Over 18 yrs.	Any court or magistrate.	Optional.	A. Women convicted of felony. B. Women convicted of petty larceny, vagrancy, habitual drunkenness, common prostitution, frequenting disorderly houses or houses of prostitution.
N. J.	17-30 yrs.	Courts of criminal jurisdiction and courts of quarter sessions.	Permissive.	A. Women convicted of crimes punishable by imprisonment in the penitentiary or state prison. B. Women convicted of offenses punishable by imprisonment in jails.
N. Y.	16-30 yrs.	Any court or committing magistrate.	Permissive.	A. any women between 16 and 30 convicted of a felony who has not served a term in prison. B. Any women, 16-30, or any woman of any age, convicted of petit larceny, vagrancy, habitual drunkenness, common prostitution, frequenting disorderly houses or houses of prostitution, or of a misdemeanor, not insane, or mentally or physically incapable of being benefited by institution.
OHIO	Over 16 yrs.	Any court of state.	Obligatory.	All women guilty of offenses punishable by imprisonment for more than 30 days in penitentiary, jail, work-house, or any other correctional institution (except murder in the first degree without recommendation of mercy).
PENN.	16-30 yrs.	Courts having jurisdiction over the offense.	Permissive.	Women convicted of any offense including street-walking.
WIS.	16-30 yrs.	Courts having jurisdiction over the offense.	Permissive.	Class 1. Women convicted of felony, first offense (except murder in 1st, 2nd or 3rd degree). Class 2. Women convicted of miscellaneous offenses punishable by imprisonment for more than one year. Class 3. Vagrants, habitual drunkards, common prostitutes, drug users or any misdemeanants.

State.	Sentences.	Records and Warrants.	Notification of Commitment.
IND.	Indeterminate within the maximum term provided by law.	*	*
IOWA	Indeterminate for Class A, within maximum of term provided by law; Class B, within 5 years.	Sex, residence, age, nativity, and occupation to be recorded and transferred to institution with prisoner.	*
MAINE	Indeterminate for Class A, within 5 years; Class B, within 3 years. Determinate for Class A, if punishment prescribed by law is for more than 5 years.	Record of name, age, birthplace, occupation, previous commitments, if any, and for what offense, last address, and particulars of offense committed, to be made and transmitted with warrant to superintendent.	Duty of judges to notify superintendent of commitment.
MASS.	Indeterminate (1) within 5 years, for larceny or felony; (2) within 2 years, for misdemeanors, except (3); within 1 year, for drunkenness and violation of Uniform Desertion Act. Determinate sentence of more than 5 years may be imposed.	A. Clerk of court to transmit with mittimus an attested copy of complaint or indictment under which person was convicted; names and addresses of persons who testified at trial for and against; records containing names and addresses of presiding judge, district attorney and of attorney for defendant. B. Bertillon record for felony cases. C. Institution records.	
MINN.	Indeterminate between minimum and maximum of term prescribed by law for the offense.	Same as upon sentence to state reformatory for men.	*
N. J.	Indeterminate within maximum of term provided by law.	Clerks of courts to provide attendants with copies of commitments.	*
N. Y.	Indeterminate within 3 years.	Record blanks to be furnished clerks of courts by institution. Courts to make record of name, age (to be accepted as legal age), birthplace, occupation, previous commitment, if any and for what offense, last place of residence, and particulars of offense for which committed. This to be transmitted with warrant and put on record at institution.	Judges at once to notify superintendent of commitment.
OHIO	Indeterminate (but a determinate sentence shall not make void the commitment) for Class A, between minimum and maximum of legal term; Class B, within 3 years.	Board shall keep record showing name, residence, age, nativity, occupation, condition and date of entrance; date, terms and cause of discharge and condition at time of leaving.	*
PENN.	Indeterminate within 3 years or, when maximum of term specified by law exceeds 3 years, within the maximum prescribed (Sentence not void if by mistake made determinate).	A complete record of name, nativity, nationality, previous life and surroundings, particulars of offense for which committed, must be kept at institution; also sent to State Board of Charities.	Courts to notify institution of proposed commitment.
WIS.	Optional with court as to Indeterminate sentence between minimum (not less than one year) and maximum term specified by law, and Determinate between minimum (one year) and the maximum specified by law.	Complete record of trial and statement of district attorney to be furnished by clerk. Record kept at institution to include date of admission, name, age, nativity, parentage, education, previous environment, also semi-annual record of progress.	Clerks of courts to notify superintendent of commitment.

State	Attendants.		Provision for Children of Prisoners.	
	Sex.	Provided By	Under One Year Old.	Over One Year Old.
IND.	*	County from which woman is sentenced.	*	*
IOWA	Woman	By court in which woman is sentenced.	*	*
MAINE	*	*	Nursing child and under one year, or born after commitment, may be admitted to institution and kept until two years, when it must be removed and provided for by Board (in asylum or with relatives until discharge of mother.	Children over one year without proper care must be provided for by magistrate with relatives or in proper institution.
MASS.	*	*	Children under 18 months may be admitted, placed with relatives or overseers of the poor where they have legal settlement. If without legal settlement in Massachusetts, they may be sent to State Hospital, as provided in case of alien paupers.	*
MINN.	*	*	*	*
N. J.	Sheriffs	County in which woman is sentenced.	Nursing children under one year or born after commitment, may be admitted to institution and retained until two years when they must be removed and provided for by Board until discharge of mother.	Children over one year must be provided for by the county in which the mother was committed.
N. Y.	Women (known as marshals).	Board of Managers	Nursing children under one year or born after commitment may be retained in institution until two years of age, when they must be removed and provided for by Board of Managers until release of mother, either in asylums or with relatives or proper persons.	Children over one year without proper guardianship shall be committed by magistrate to asylum, relative or proper person.
OHIO	*	*	*	*
PENN.	Woman	Institution.	*	*
WIS.	Must be a woman.	Provided by institution but paid for by county in which woman was convicted.	*	*

State.	TRANSFERS.	
	TO Reformatory FROM Other Institutions.	FROM Reformatory TO Other Institutions.
IND.	TO penal department, when opened, of all women (with records) confined in the state prison. TO correctional department, from the Indiana Girls' School, of incorrigible girls over 18. TO institution, from jails and workhouses.	FROM institution to Insane Hospital.
IOWA	TO reformatory from Industrial School for Girls, of incorrigible inmates.	FROM reformatory back to Industrial School for Girls.
MAINE	TO reformatory back from state prison of any woman committed temporarily.	FROM reformatory to state prison (temporarily) of any woman who is incorrigible or whose presence is detrimental to other inmates.
MASS.	TO reformatory from State Farm, Jails (sentenced prisoners), Houses of Correction, Industrial School for Girls, Insane Hospitals (when restored to sanity and time has not expired), Hospitals (if removed thereto from reformatory).	FROM reformatory to State Farm, Jails, Houses of Correction, Industrial School for Girls, Insane Hospitals (by order of the court), Hospitals (for medical or surgical treatment).
MINN.	*	*
N. J.	TO reformatory from state prison, on written request and approval of governor, of all women over 17, with copies of records; also, from penitentiary. TO reformatory from State Home for Girls. TO reformatory back from Insane or other Hospitals, if within maximum of term.	FROM reformatory (temporarily) to Insane Hospital, through the court in which the reformatory is located. FROM reformatory to hospitals for medical treatment (state not to pay more than \$2.50 a week).
N. Y.	*	FROM reformatory back to county at expense of county, of women improperly committed. FROM reformatory to other state institutions by State Board of Charities with approval of governor and upon notice duly made to the institutions from and to which transfer is contemplated.
OHIO	TO reformatory from the Ohio penitentiary, of all women except those sentenced for murder in the first degree without recommendation of mercy, together with records. TO reformatory from Girls Industrial School, of incorrigible girls over 17, together with records.	*
PENN.	TO Home from other penal institutions, by requisition, when there is unoccupied room.	FROM Home to state prison, of incorrigible inmates (and return by requisition).
WIS.	TO Home from state prison, of any woman, under 30, serving her first sentence. (Home has right of parole). TO Home from Industrial School for Girls and other institutions, public and private, of girls committed there to by courts who would have been eligible for admission to home. Home then has control.	FROM Home to state prison of (1) women over 30 at time of commitment, (2) any incorrigible in class A, and also in case of overcrowding (and may return latter). FROM Home to Insane Hospital, or Home for Feeble Minded (and return if within the expiration of term).

State.	IV. DESCRIPTION OF INSTITUTION.		
	Purpose of Institution.	Acreage.	Description of Land.
IND.	"To reform the character, preserve the health, secure fixed habits of industry, morality and religion. Discipline, employment and instruction shall be conducted to the end that the inmates shall be rendered intelligent, industrious and useful citizens of the state.	15.61 A.	Site to be within 5 miles of state capitol.
IOWA	"To secure the reformation and future well-being of inmate." To "prepare inmates to lead virtuous lives and become self-supporting members of society."	218.8 A.	*
MAINE	"Teaching such women a useful trade or profession, and improving their mental and moral condition."	Not less than 200 A.	Part shall be arable to the end that so far as practicable the food for the inmates may be produced on such land.
MASS.	Reform of women sentenced thereto.	(Acre to be set aside for cemetery).	Suitable.
MINN.	Education, employment, training, discipline and safe keeping of the inmates.	165 A.	In any county of state; healthfulness of location, character of soil, facilities for drainage, quality of water supply, market-value of site, convenience to railroad transportation and needs of state to be considered.
N. J.	To "secure the reformation of the prisoner."	(Acre to be set aside for cemetery).	*
N. Y.	Teaching the women a useful trade or profession and improving their mental and moral condition.	(1) 92.57 (2) 195.5	*
OHIO	*	Not over 300 A. (option on 500 A. adjoining).	*
PENN.	"To prevent young offenders from becoming hardened criminals * * to subject them to remedial treatment, training and instruction * * to * * secure to each instruction in the rudiments of an English education and in such manual and skilled vocations as may be useful after discharge and whereby she may obtain self-supporting employment."	Not less than 100 nor more than 500 A. (1915, 500 more, to control water supply).	Site to be in central part of state, reasonably near a railroad, unless on lands already owned by state. Land to be arable to the end that so far as practicable the food for the inmates may be produced on the land.
WIS.	"For protection and reformation of inmates."	*	Suitable and proper.

IV. DESCRIPTION OF INSTITUTION—(Continued).

549

State.	Buildings.	Notification of Opening of Institution.	Preliminary Examination.	
			Physical	Mental.
IND.	To provide for two separate departments, penal and correctional.	By proclamation of governor; (also when institution becomes overcrowded).	*	*
IOWA		Board of Control to notify judges of courts 80 days prior to opening.	*	*
MAINE	Must be constructed on cottage system.	*	*	*
MASS.	Brick construction.	By proclamation of governor.	Physical examination given; Bertillon records of women sentenced for felony.	Mental examination given.
MINN.	Cottage plan.	*	*	*
N. J.	*	Board of Commissioners to notify clerks of courts.	*	*
N. Y.	Determined by Commission of Sites, Grounds and Buildings.	*	*	*
OHIO	To be arranged so as to make classification possible.	By proclamation of governor to county clerks, judges and magistrates having jurisdiction; also when new buildings are opened.	*	*
PENN.	Shall be constructed on cottage system.	Board to notify governor when institution is ready.	*	*
WIS.	*	*	Especial attention to be paid to women affected with venereal disease.	*

State.	Classification of Inmates.	Education.	
		General and Vocational.	Employment.
IND.	Penal and correctional departments to be separated; rules and regulations to be adapted to character of inmates in each.	Instruction in reading, writing and arithmetic; mental, manual and moral training to be provided in addition to employment.	Industries to be provided for; inmates of correctional department must be employed.
IOWA	Classification and separation of different classes to be provided for.	Instruction to be given in religion, morality, physical culture, common school and other branches, domestic and mechanical arts.	To be employed about institution.
MAINE	To be according to their mental and moral condition and the care, instruction and employment which they should respectively receive.	Useful trades and professions to be taught.	Employment to be provided for the purpose of teaching useful trades.
MASS.	Director, with approval of governor and Council, shall make rules for dealing with prisoners, according to their behavior and industry.	Chaplain acts as teacher, and as such has charge of prison school and instruction of prisoners. Useful trades may be taught.	Inmates shall be employed in industries established by Director, or in custody of officer in caring for public lands and buildings, but not outside precincts of place of imprisonment in doing work of any kind for private persons.
MINN.	Proper classification and grouping to be provided for.	Religious instruction weekly.	*
N. J.	*	Useful trades or professions to be taught.	Provision for employment. (No contract labor permitted in any correctional institution.)
N. Y.	Presented by Board of Managers.	Prescribed by Board of Managers.	Employment of inmates shall be for the purpose of teaching useful trades for which they may be given a compensation, charged \$2.00 a week for board, receiving excess earnings.
OHIO	Classification obligatory.	*	*
PENN.	To be provided for according to mental and moral condition.	Instruction to be given in (1) rudiments of English language, (2) manual and skilled vocations looking toward future self-support.	Employment to prepare for future self-support; to be solely for commonwealth—no contract labor.
WIS.	*	Instruction in trades and domestic science to be provided.	Industries to be created.

State.	PAROLE.		
	Paroling Power.	Conditions.	Agents.
IND.	Superintendent, board of trustees, chaplain, physician with clerk; the superintendent, president of board.	Satisfactory institutional record; reasonable probability that inmate will remain at liberty without violating the law.	Parole agents to be provided for.
IOWA	Board of Parole.	Good conduct, proficiency in studies, excellency in industrial department.	
MAINE	Board of Trustees.	Reform and suitable employment secured in advance.	*
MASS.	Board of Parole of Bureau of Prisons.	Reform, and obedience to rules governing paroled prisoners: 1. Be law-abiding, 2. Industrious, 3. Avoid bad associates and be discreet in conduct, 4. Use no intoxicants, 5. Obtain permission before leaving employment or changing address, 6. Report once a week during first month, and once monthly thereafter until expiration of sentence; give such information as is required.	One agent for aiding discharged prisoners; two agents for supervising women on parole.
MINN.	Board of Parole.	Expiration of minimum term provided by law for offense.	*
N. J.	Board of Commissioners.	Recommendation of superintendent that inmate is likely to be law-abiding, certain amount of money and apparel to be provided.	*
N. Y.	(1) Board of Managers. (2) Board of Managers; judge, on written request, may serve as member in voting parole to any woman committed by him.	Prescribed by Board of Managers.	Provided by Board of Managers.
OHIO	Ohio Board of Administration on recommendation of superintendent.	Recommendations of superintendent, Class A. not eligible under 5 years; Class B, eligible as follows: First offenders, after 2 mos.; second offenders, after 4 mos.; Third offenders, after 6 mos.	*
PENN.	Board of Managers.	Term of parole—90 days, subject to renewal.	*
WIS.	State Board of Control.	That the inmate shall for a reasonable time convince the Board that she will be law-abiding, temperate, honest and industrious and providing that suitable employment has been secured in advance.	To be provided by Board and known as field officers.

State.	VIOLATION OF PAROLE (AND ESCAPE).		PARDON.
	Penalty.	Returned by	
IND.	*	*	*
IOWA	Return.	Peace officer on order of Board of Parole.	Governor, on investigation and recommendation of Board of Parole.
MAINE	Return to institution to serve unexpired term, dating from revocation of permit; penalties provided for those aiding in escape.	By any officer of institution, sheriff, etc., and other persons, but cannot be detained (pending return) in jail; officers to be compensated by county from which commitment was made.	Pardoning powers of governor conserved.
MASS.	Return to institution to be held according to terms of original sentence, time between release on permit and return not considered part of original sentence.	On warrants issued by Board of Parole of Bureau of Prisons.	By governor, with advice and consent of council.
MINN.	*	*	*
N. J.	After return to institution, may be made to serve unexpired term of maximum sentence.	On warrants issued by Board of Commissioners.	*
N. Y.	May be rearrested and returned to institution for unexpired portion of term, dating from time of escape or conditional discharge.	By marshals, without warrant, in case of escape. By marshals, on warrant issued by president and secretary of board, in case of violation of parole.	*
OHIO	Shall be returned to serve unexpired portion of the maximum sentence, dating from time of escape or conditional discharge.	Written order of superintendent for officer named therein to arrest.	May be recommended (without intervention of state board of pardons) to governor by superintendent and unanimous vote of Board.
PENN.	May be kept in institution maximum term including time on parole. Penalty for escape, "breach of prison."	Any person having authority to serve criminal processes, on warrants issued by Board of Managers.	*
WIS.	Returned to institution; for escape, penalty not exceeding 2 years; penalties provided for aiding in escape.	On warrants issued by Board of Control.	Pardoning power of governor conserved.

State.	DISCHARGE.	VI. ORIGINAL APPROPRIATIONS.
Conditions.		
IND.	*	\$50,000 and \$15,000 annually, for support.
IOWA	Acceptable service of one year on parole.	\$2,500 for refurbishing old building and establishing industries.
MAINE	*	\$20,000 (1915) \$30,000 (1916)
MASS.	*	\$300,000
MINN.	*	\$80,000
N. J.	Satisfactory parole record; recommendation of superintendent and vote of Board of Commissioners; money and clothing to be provided.	*
N. Y.	Prescribed by Board of Managers.	(1) \$130,000 (2) \$100,000
OHIO	One year of satisfactory parole; vote of board; transportation, clothing and money to be provided.	\$100,000 \$350,000 to complete building.
PENN.	Recommendation of superintendent and physician, endorsed by Board of Managers and approved by judge of court, after conference with district attorney.	\$250,000
WIS.	Allowance, for good behavior, on term.	\$85,000 (1913) \$25,000 (1914) \$300,000 (1914) \$65,000 (1915)

THE NEW YORK "PUBLIC DEFENDER"

WILLIAM DEAN EMBREE.²

The Voluntary Defenders' Committee was organized, as its Constitution states, "to employ a staff of attorneys and investigators, who will offer their services to the criminal courts in cases where the law provides for the assignment of counsel to the defendant, who will undertake the voluntary defense of needy and deserving persons accused of crime and who will assist others engaged in like efforts." It began its work on April 1st, 1917, with offices at 57 Centre Street, in a building owned by the city, within three blocks of the Criminal Courts Building and the City Prison. The whole second floor of the building was assigned to the Committee free of charge by the city authorities. The Committee employs a staff of attorneys and investigators, who offer their services to the Criminal Courts in those cases where the law provides for the assignment of counsel. Some member of the office staff speaks one or more of the following named foreign languages: Italian, Yiddish, French, German, Hungarian, Bohemian (Czech), Polish, Russian, Ruthenian (Little Russian), and Slovak. The members of the staff serve on a salary basis and do no other work.

The work of the Committee is confined to cases in the Court of General Sessions (felony cases triable by indictment) in the County of New York, this circumscription of field being made necessary by the limited size of the Committee's staff. Requests from public officials or organizations of high standing, however, have called the Committee's lawyers into a few cases of unusual merit in other courts, with the result that in three months we have handled four cases in Bronx County, two in Kings County, one in Richmond County and

¹First Quarterly Report of the Voluntary Defenders' Committee of New York City, covering the quarter April-June, 1917.

²Chief Counsel for the Voluntary Defenders' Committee, 57 Centre St., N. Y. City. The personnel of the Committee is as follows:

Nathan A. Smyth, Chairman; James Bronson Reynolds, Chairman, Executive Board; Richard M. Hurd, Treasurer; Timothy N. Pfeiffer, Secretary; Mrs. Francis McN. Bacon, Jr.; George Gordon Battle, Mrs. Francis H. Cabot, John Kirkland Clark, George Brokaw Compton, Robert J. Eidlitz, W. H. L. Edwards, William Dean Embree, Samuel H. Fasher, Raymond B. Fosdick, Francis P. Garvan, Alexander M. Hadden, Mrs. Learned Hand, Charles E. Hughes, Jr., S. Walter Kaufmann, Sam A. Lewisohn, Philip J. McCook, Robert McC. Marsh, Stephen H. Philbin, Charles T. Root, Eustace Seligman, Arthur Woods, William Dean Embree, Counsel; Timothy Newell Pfeiffer, Associate Counsel; Mrs. Marion M. Goldman, Director of Investigations.

several cases in the City Magistrates' Courts and the Court of Special Sessions.

The number of second offenders, who are increasing with appalling rapidity, is suggestive and relevant to the need of a public defender in New York. In 1906 in New York County, out of 2,543 convictions under indictments, 648, or 21 per cent., were second offenders. In 1915 out of 3,728 convicted, 1,328, or 35 per cent., were second offenders. Men who have been imprisoned in and have spoken from the Tombs assert, and there is much to support their views, that second offenders are bred by criminal practitioners whose chief aim in defending a case is to get the defendant off at any price. Of the 3,728 persons convicted after indictment for felony in 1915, 2,737 were between 15 and 30 years of age, over 1,000 being between 15 and 20.

In the fall of 1914 the Association of the Bar of the City of New York and the New York County Lawyers' Association appointed committees to report upon the necessity and advisability of creating the office of public defender in New York City. After a thorough investigation, in which the opinions of lawyers and public officers throughout the State were gathered, each committee reported emphatically against the public defender as a public official. Both committees expressed the opinion that the field examined was one which merited the activities of private philanthropy. Following the judgment of these two committees, the Voluntary Defenders' Committee was formed, and funds were obtained to give the experiment a three years' test, leaving the future form of this work to be determined on the sound basis of experience.

During the three months that the work of the Committee has been under way, the staff has handled 182 cases; that is, at the rate of approximately seven hundred and fifty a year. This is considerably more than it was thought could be cared for in the first year. In addition, six pardon cases have been investigated, and applications for legal aid of various kinds and from various sources in number upwards of 30 have been examined and the applicants advised and referred to the proper organizations and agencies.

In the 182 cases, the persons involved represented almost every race and creed, and the crimes charged ranged from obtaining employment by means of a false letter to murder in the first degree.

In 115 of these cases, about sixty per cent of the total number, pleas of guilty were entered without trial, but the labor involved in the majority of them was almost equal to that which would have been required had the cases actually come to trial. In many instances the

admission of guilt came only after a most painstaking and careful investigation of the defendant's story and the evidence against him, and sometimes only after the case had been fully prepared for trial and the day of trial had actually arrived; in four cases the defendants pleaded guilty after the trial had begun. In the course of these investigations the real character and condition of the defendant has received attention that has been heretofore unknown in the routine of criminal procedure involving needy persons. At the request of the Committee's counsel eight clients were sent to the psychopathic ward of Bellevue Hospital for observation of mental condition. (Defendants referred to this ward are kept under observation for a period of about ten days and then returned to the court with an opinion by the physician in charge as to the defendant's probable mental condition.) Of this number three were found to be insane, and were dealt with accordingly; one was found to be feeble-minded; and another a victim of chronic alcoholism. Each was sent to an institution especially prepared to deal with the particular defendant. In the case of another who was found to be merely in a highly wrought nervous condition, a commission appointed by the Court, in the course of its investigation, brought out facts which led the District Attorney to discontinue the prosecution, and the young man, a Turkish Jew, was placed in the hands of persons of his own race who agreed to befriend him. The other two were reported probably sane and court proceedings followed in due course.

A number of the investigations have led to evidence of crimes committed by other persons. This evidence has been collected and placed in the hands of the District Attorney or the police authorities.

Leaving out of account four cases in which the defendants pleaded guilty after the trial had begun, only six per cent. of the cases have actually been tried. These cases are interesting, however, in view of the well-nigh *sui generis* position of the Committee's lawyers in their relation to their clients' real welfare on the one hand, and the public interest on the other.

Of the twelve cases actually tried there were eight acquittals and four convictions; of the twelve men who went to trial all asserted their innocence to counsel. Of the eight acquitted, we believed in the innocence of six. Of the four convicted, two were clearly guilty; the evidence against the third was overwhelming, and the evidence against the fourth was not strong, but he had all the subjective evidence of guilt and this did not escape the notice of the jury when the young man testified in his own behalf, so we were informed after-

wards by one of the jurors who brought in the verdict. Of the remaining 55, probably one-third will plead guilty before the day of actual trial arrives. A number will be dismissed on the motion of the District Attorney, when, in preparing the case for trial, he decides that there is not sufficient evidence on which to secure a conviction. The remaining cases will be determined by a jury.

It is the policy of the Committee's lawyers to have their clients on trial take the witness stand and testify in their own behalf unless they decline to do so. Of the twelve who went to trial all were willing to take the witness stand, and eleven did so, counsel taking the responsibility of keeping the twelfth off the stand. He was acquitted, and justly so, but would probably have been convicted if he had taken the witness stand, because of a prison record of twelve years, extending from San Francisco to New York, which the District Attorney was prepared to bring out on cross-examination. The Committee's lawyers have not had to meet the difficult task of actually going to trial with a client who admitted his guilt but demanded a trial. A few have taken this attitude at first, but have subsequently agreed to deal honestly and frankly with counsel and the court.

The work has met with the most cordial co-operation on the part of the judges, the Police Commissioner and the members of the Police Department, the Commissioner of the Department of Correction (the prisons) and the officers of that department, and the District Attorney. The co-operation of the District Attorney has been especially helpful, because, by frequent conferences between the members of the District Attorney's staff and the lawyers for the Committee, the truth in many cases has been quickly arrived at, with the result that in some cases the defendants, who at first asserted their innocence, have admitted their guilt; in others, the District Attorney, on hearing the defendants' stories, has been convinced that all the evidence taken together did not show guilt, and has promptly recommended the discharge of the defendants, to the end that the trial calendars have been reduced, the average sojourn of the defendants in the City Prison (before conviction or release) has been shortened, and the cause of justice promoted generally. The Committee, moreover, has been a veritable clearing house for the many charitable and philanthropic organizations of the city to which clients, discharged or placed on probation, and their families, have been referred.

While it is the aim of the Committee that the rendering of legal service shall be its chief concern, an almost equal emphasis is laid upon the social side of the work. Every case is thoroughly investigated,

not only for facts bearing directly upon the crime charged, but also for facts of family, home, and other environment which may have led up to the defendant's anti-social conduct and consequent arrest. The result of this investigation is of great assistance to the Court in imposing sentence, and when the defendant is discharged or paroled it is indispensable to the work of the Committee in obtaining proper employment and otherwise assisting the client to regain his place in society.

The work of the Committee is at present confined to cases assigned by judges in the Court of General Sessions (felony cases triable by indictment) in the County of New York, as we have said above. This circumscription of field is made necessary by the limited size of the Committee's staff of lawyers and investigators. In our judgment it should continue to be the policy of the Committee, however, to confine its effort to felony cases in the Court of General Sessions until such time as an increased staff can do some of the work in the other courts without leaving undone any portion of the important work in the Court of General Sessions.

The following cases are fairly illustrative of the work done by the Committee's counsel:

Our client and his co-defendant were charged with burglarizing Mrs. X's apartment and stealing a suit of clothes belonging to her son Patrick. They had been arrested on suspicion by a patrolman while carrying a coat and vest on the street. The patrolman with his prisoners and Mrs. X with her complaint arrived at the Police Station simultaneously, and Mrs. X unhesitatingly identified the wearing apparel as Patrick's. Subsequently before the Magistrate and Grand Jury, Michael, another son, was mistakenly subpoenaed, but indictment followed. After a thorough investigation on our part it was ascertained that the owner of the coat and vest was a street "drunk," from whom one of the defendants had pilfered the clothing in order to buy drugs. When we took the real owner to the property room of Police Headquarters wearing the trousers which corresponded to the coat and vest, and when Patrick had been subpoenaed and had testified that the recovered property was not his, the facts were brought to the attention of the Assistant District Attorney, and he immediately recommended the discharge of one of the defendants and the commitment of the other, to a farm for the cure of drug addicts, on a plea of guilty to an amended indictment charging petty larceny. The true facts in this case might have come to light when the case was reached on the trial calendar six or eight weeks after indictment; the work of

the Committee released one man and disposed of the case of the other in eight days.

A young negro was accused of highway robbery. The evidence against him was overwhelming, for he was near the scene of the crime, he was unemployed, his hat was found close by, he knew the men who he claimed committed the crime and he ran away with these men after its commission. His defense was that he lived in the house in front of which the robbery occurred, that he was leaving to keep an engagement with another colored boy nearby, that he had passed by one of the men robbed, who, being drunk, had snatched the hat off his head thinking the defendant his assailant, and that after a scuffle he (the defendant) became afraid of arrest and ran. Unfortunately he ran in the same direction as the others, and when the patrolman shot his revolver in the air the defendant alone obeyed the order to stop. Improbable as the story sounded at first the Committee's attorneys became convinced of its truth, not only because it was found possible to verify the location of the defendant's lodging house near the scene of the crime, his employment and respectable home in Virginia, but also because of his demeanor throughout the case. The jury, however, convicted him. The Committee's lawyers thereupon gathered for the court evidence of previous good character, obtained a promise of employment and were successful in persuading the judge to suspend sentence; a rare procedure after conviction by a jury's verdict. The defendant is now working in an up-state town and reporting regularly to the probation officer.

A Chilean sailor was charged with burglary. The complainant was the keeper of the boarding house where the defendant lived when in this port. On his way to bed, and while intoxicated, the defendant entered the proprietor's bedroom by mistake and fell over the bed. The proprietor, convinced it was a burglar, attacked the defendant with a sharp instrument and put out his eye. After a brief stay in a city hospital the defendant went to the Seamen's Friends Society and wrote the proprietor demanding damages for the loss of his eye. The reply took the form of a warrant of arrest on a burglary charge. The shrewd wife of the proprietor, scenting trouble, had convinced her husband that the surest way to ward off a damage suit was to cause the arrest of the sailor. We brought these facts to the District Attorney's attention and the defendant was discharged, and this like the other case was disposed of eight days after indictment. Through the courtesy of the Burke Foundation Home in White Plains the sailor

spent three weeks there and, having recuperated, earned enough money to buy a glass eye.

A husband and father had been extradited from New Orleans on a charge of abandoning his minor children and had pleaded guilty of the charge. At the time of sentence his wife pleaded with the judge for a suspension. Western relatives of the man, small tradesmen, had come East for the purpose of taking the entire family back with them and were ready to give immediate employment to the husband, but the delay of a week had practically exhausted their ready cash so that they were unable to furnish the bond which the court required to insure the performance of conditions upon which the court proposed to suspend sentence, i. e., the payment to the County of New York of \$218, the amount spent in returning the defendant from New Orleans. The family and relatives pooled all the jewelry upon their persons, pawned it, and brought into court a substantial portion of the sum of money required and convinced the judge of their genuine desire to rehabilitate the family. The court then suspended sentence and the family departed. Two weeks later the wife's brother came into the Committee's office and said that the defendant had again abandoned his family, giving up a \$20.00 a week job and leaving them in the relatives' hands. The defendant has not yet been apprehended.

Two former Assistant District Attorneys have tried cases as volunteers for the Committee. In these cases the value of a thorough investigation was demonstrated in a marked degree. In one case the defendant, charged with the crime of assault, when arraigned on the indictment had offered to plead guilty of the crime. Three co-defendants did so plead, and though No. 4 professed his innocence he had scant hope of establishing it, largely because a wealthy corporation was interested in the prosecution. During our preparation of the case for trial, his attitude changed and at the trial he took the stand in his own behalf, and told a clear and convincing story, showing that at the time of the commission of the crime he was not with the co-defendants or acting with them. Skillful cross examination of the people's witnesses revealed glaring inconsistencies in their testimony and an overzealous effort to "send away" No. 4 with the other three. The jury disagreed, standing nine to three for acquittal. The District Attorney then recommended the discharge of bail and the defendant went free. He has since enlisted in the army.

In the other case, tried by the volunteer ex-Assistant District Attorney, a verdict of acquittal was secured. The defendant was charged with a crime for which the maximum imprisonment is twenty

years, and because of its grave nature and a considerable amount of circumstantial evidence against him, his position before a jury was a hazardous one. By reason of the unusually thorough investigation that had been made, all the facts tending to establish the truth were brought out. The searching analysis by our attorney of the weakness of the people's case, together with the fact that the defendant took the stand and testified with inherent truth and frankness in his own behalf, made possible the verdict of acquittal.

In another case involving the larceny of an automobile, the Committee's attorneys received information in the midst of a trial which convinced them of the defendant's guilt. After the people had rested on Friday afternoon an adjournment was taken until Monday morning. On Saturday, at a further conference, the defendant admitted his guilt, told the manner of the theft and where he had sold the automobile. We immediately communicated with the Automobile Squad at Police Headquarters, and by night the car was recovered. On Monday, the defendant pleaded guilty and sentence was deferred in order to provide opportunity for him to testify against two others involved in the larceny; indictments followed.

A boy seventeen years of age who had been employed as a bank messenger was prevailed upon by an older and more experienced youth to misappropriate several thousand dollars belonging to the bank. The money was divided between the two, but our client in a few hours became remorseful and returned his share of the money. Upon his arrest he gave the police every assistance in locating the co-defendant. When the latter was arrested only a few hundred dollars of his share were recovered, and in view of the fact that he had been the instigator of a crime the court sentenced him to the Reformatory at Elmira. Our client's connection with the matter was fully explained to the court and sentence was suspended on condition that he go to the George Junior Republic for such time as the Probation Officer should deem wise. A recent letter from Herman is full of gratitude to the Committee's lawyers for saving him from a penal institution.

STATISTICS COVERING THE OPERATIONS OF APRIL-JUNE, 1917.

Cases	182
Pardons	6
Other Criminal Matters.....	7
<hr/>	
Total	195

RECORD OF 182 CASES.

Age—

16 to 21 years.....	77
21 to 25 years.....	38
25 to 30 years.....	24
30 years	43

Civil Status—

Married	54
Single	128

Source—

Assigned by Court.....	156
Referred by Other Organizations.....	10
Referred by Individuals	16

Sex—

Males	163
Females	19

Charge—

Larceny	56
Burglary	69
Assault	15
Robbery	22
Homicide	5
Other Crimes	15

Dispositions—

Plea of Guilty	115
Acquitted	8
Convicted	4
Discharged on own recognizance.....	16
Dismissed	8
Other Disposition	5
Pending	26

Sentence—

Suspended	46
Penitentiary	28
N. Y. City Reformatory.....	8
Elmira	10
State Prison	20
Other Institutions	9
Pending	6

Social Facts—

Parents Foreign Born	110
Previously Convicted	84
Drugs	16
Drink	44
Insane	4
Mental Defect	11
Serious Illness	4

THE MOST EFFECTIVE METHODS OF DEALING WITH CASES OF DESERTION AND NON-SUPPORT¹

WILLIAM H. BALDWIN.²

Family desertion and non-support involves a paradox which makes dealing with the subject difficult, because the punishment which is often so well deserved aggravates the evil which it is intended to cure. The principles upon which successful treatment of it depends have been evolved from experience, and some of them are very plain.

1. It is necessary to begin early, and with the help of skillful probation officers. District visitors of charity organization societies can sometimes discover, before cases get into court, tendencies in families which might be corrected by calling prompt attention to the consequences involved; and wise care in such instances, anticipating the possible trouble, would often serve as a valuable preventive.

PROSECUTIONS TO BE AVOIDED WHEN POSSIBLE

When complaint is made to the court the circumstances should be investigated by a man or woman of experience, with the object of reconciling the parties, and having the husband or parent fulfill his or her obligations without being compelled to do so by the operation of the law. Carelessness, indifference, some temporary attraction outside the home, the beginning of habits of dissipation, lack of employment which might be found with a little assistance, may, any of them, start a man on the course which ends in continued non-support or in desertion; and there is no more effective way of solving such cases than by bringing, if possible, enough influence to bear on the husband or parent to break up such habits before they are confirmed. The family in which it has been necessary to invoke publicly the aid of the court to compel support will ever after be a different family from what it was before. The family life may be, and often is, restored so that it goes on happily; but there will always be a remembrance of the unfortunate necessity of compulsion. The importance of settling such cases without court action where it can be done is very great.

PROBATION OFFICERS SAVE TIME IN DEVELOPING FACTS.

2. The work of probation officers is especially necessary in deal-

¹Read at the meeting of the National Probation Association at Pittsburgh, Pa., June 5, 1917.

²1415 Twenty-first street, Washington, D. C.

ing effectively with such cases also because, if unsuccessful in effecting a settlement, and if the case must be brought into court, an experienced probation officer can develop the facts in regard to it, and bring out the circumstances connected with it, better than can be done in any other way.

I cannot emphasize too forcibly the need of an ample force of such trained probation officers, not only as a means of securing just and proper action on the part of the court, but also of facilitating its work.

Many of the people in family desertion and non-support cases are ignorant, their habits are bad, the family relations are complicated, there are facts in their lives which they are concealing from each other, and which they are unwilling to reveal in court, and even if willing to tell the facts, so much feeling has been aroused, there has been so much brooding over wrongs, fancied or real, that the judge is often compelled to hear many irrelevant statements before he is able to drag out from a willing witness the facts which he needs for a proper judgment.

During the whole of one forenoon I sat with Judge Latimer in the Juvenile Court of the District, listening to such cases; and what was most apparent in them all was that if a good probation officer had first looked up the facts, the judge, in not more than one-third the time, could have asked questions which would have brought out clearly the merits of the cases, and thus saved the time, not only of himself, but of all the court employees and the waiting witnesses, in going over matters of no importance.

These cases, in many of which no lawyer is employed, differ from important commercial cases where able attorneys develop and bring out the important facts for the court, giving it a chance to restrain and guide that which either side attempts to set forth; and the work of the court should not be clogged by having the judge compelled to go over in open court, in searching for the gist of the case, unimportant matter which could be eliminated by the help of a competent probation officer. Next year, for the first time, the Juvenile Court of the District is to have a probation officer to investigate adult cases; and I am sure he will earn his salary in the time he saves the Court in the trial of non-support cases, to say nothing of the assistance rendered in other ways.

EXTRADITION SHOULD BE EASY AND CERTAIN.

3. What has been said implies that the offender is within reach. If he is not within the jurisdiction, it is, of course, necessary to get him.

(a) For this purpose extradition should be made easy. In the case of larceny and many other crimes the community is well rid of the offender if he flees, but family desertion differs from almost every other offense in that the absence of the man deprives the community of a most valuable asset, his potential earning capacity.

For this reason the offense should not be made felony, which is necessarily punishable by death or imprisonment in the state prison. The purpose is not to inflict such severe punishment, the prospect of which makes prosecution more difficult, and lessens the chance of conviction, but to make the man relieve the community of the burden of supporting his family; and this can best be done by making the offense a misdemeanor, punishable by imprisonment for a year, which may be extended by working out a fine of \$500 in addition.

(b) Extradition should also be made certain. Nothing would do more to diminish the evil, or be of greater economic advantage to the community, than the practical evidence, that even though a deserter leaves the state he will be brought back in every instance where he can be found; and Alabama³ and some other states in recent laws have done well to insert an express provision that it shall be the duty of the county commissioners, or the corresponding officials, to provide the funds for doing so whenever requested by the prosecuting officer.

The mistaken impression that governors will not grant or honor requisitions for fugitives unless they are charged with felony, which led to the enactment of the felony law in New York and other states some twelve years ago, has done much to protect deserters, not only by making the process of extradition more formidable in states which have felony laws, but by hindering efforts at extradition in those where the offense is only misdemeanor. In spite of abundant evidence that this impression is not only theoretically, but practically, incorrect,⁴ it

³The excellent law passed by Alabama on September 16, 1915, has just been declared unconstitutional, apparently because of a slight defect in the title, like that which last year led to a similar decision in Pennsylvania on the law of 1913 in that state. The Pennsylvania law has just been re-enacted with an important addition which makes it apply to illegitimate children also.

⁴A comparison of the experience of several states under felony and misdemeanor laws in the following table makes this very plain:

NUMBER OF REQUISITIONS FOR FAMILY DESERTERS EACH YEAR.

	—Felony—		—Misdemeanor—		
	N. Y.	Minn.	N. J.	Penna.	Mass.
1910	31	..	40	13	3
1911	33	..	47	10	5
1912	35	4	37	24	19
1913		4	39	33	32
1914		4	41	31	32
1915		8			32
1916		5			40

still lingers; and the responsibility for it rests on those who assume that governors will not extradite unless a man is charged with something which may land him in the state prison or the electric chair. Nothing could better indicate the progress which has been made in this perplexing subject during the last fifteen years than the excellent report which has just been submitted by Judge Hoffman's Committee, which recommends that we should go a step further even than a Domestic Relations Court, and put all these and other related cases into a Family Court. Surely it ought not to be necessary to invoke the specter of the state prison and the electric chair in order to bring a man who is not supporting his family back from Covington, Kentucky, into Judge Hoffman's Court!

In classic times each tragic actor wore a mask with which to impress the spectators. In our most successful plays now men and women in ordinary dress move the audience by portraying in the most truthful and natural way possible the story of the play. It would be almost as absurd to require them to wear masks on their faces because it was done in the past as it is to insist that unless a frightful felony charge is presented to a governor, he will make no effort to protect the interests of a suffering wife and her children.

FELONY CHARGE NOT NECESSARY TO INTEREST GOVERNORS.

Careful investigation in numerous instances has shown that governors are quite ready and able to appreciate the merits of non-support cases, even when not dressed up in the mask of felony. Two only need be given. Several years since a man in an influential position in Florida, who had asked about the Uniform Act, wrote that he proposed to make the offense felony, because it was necessary to do so in order to get governors in that part of the country to honor requisitions and the bill was so introduced. The statement had a strange sound in view of the fact that a man had been brought back to a neighboring state charged with misdemeanor for disturbing a religious meeting;

In the three years comparable with New York, New Jersey issued more than four times as many requisitions for misdemeanor in proportion to population in 1910 as New York did for felony, and the average for the last four years in Massachusetts was two and one-half times as many.

The average for the same years in New Jersey was more than six times as many as it was for the last five years under the felony law of Minnesota, and in Massachusetts four times as many.

This is in spite of the fact that ten years ago a former Attorney-General of Massachusetts said "extradition for misdemeanor was impossible, and he knew it." The charge is due to the fact that the matter was taken up intelligently and accomplished, as it can be in any state.

The opinion of the Massachusetts judges that the offense ought not to be felony should be conclusive. (Report on Criminal Remedies for Non-Support in Massachusetts, 1916, p. 19.)

and it developed that there was no foundation at all for it except that some lawyer had told him it was necessary to make the offense felony.

A state official in Rhode Island having declared in 1913 that extradition for misdemeanor was not possible, I recommended that instead of arguing the question a practical test of it be made by asking for extradition in the first clear case. Some weeks afterward I received a clipping stating that the Governor of Missouri had refused a requisition for a man wanted in Rhode Island for failure to support his children, because the offense was only a misdemeanor. A letter to Governor Major brought out the statement from him that the fact that extradition for misdemeanor was possible had been "a closed question for years"; that an action against the man in Missouri for non-support of his children would be proper, but that the real reason why he had refused the requisition was because the man had been divorced and had lived in Missouri long enough to acquire a residence there. The difficulty lay not in any question about extradition for misdemeanor, but in selecting an improper case for enforcing it.

ERROR AS TO ACTION OF INTERSTATE EXTRADITION CONFERENCE.

This mistaken impression is based in part on a misunderstanding of the action taken by the Interstate Extradition Conference in 1887, which is supposed by some to have declared that requisitions for misdemeanors should not be granted; but the fact is that this Conference definitely refused to adopt such a resolution, and declared instead that extradition for petty offenses ought to be discouraged. This left the question as to what offenses are petty and what are not entirely to the judgment of the demanding governor. In the thirty years which have since elapsed family desertion and non-support has increased to such an extent that the offense can no longer be considered petty, and the fact that it can best be handled as misdemeanor does not keep it in that class. It remains for those who are responsible for the execution of the laws on the subject to show the prosecuting authorities and the governors that it is worth while to bring men back and make them support their families.

An interesting instance of this has come up in Pennsylvania since the Domestic Relations Court Committee met in New York in February, in connection with a statement that although bastardy has been a misdemeanor for more than fifty years under the Pennsylvania laws, it was impossible to bring a man back from another state on account of it. When the reason for this statement was sought for, it was found that in the rules adopted by the then Governor of Pennsylvania following the Interstate Extradition Conference, and which represented his

interpretation of the attitude of the Conference, it was stated that requisitions would not issue for this offense, which was then considered trifling; but there has never been any difficulty about securing requisitions for desertion, which is only a misdemeanor in Pennsylvania, and the record of the proceedings of the Conference indicated that under proper circumstances it expected that requisitions for bastardy would be granted. The responsibility for the failure to issue them in later years was, therefore, due to a failure to impress the Governors of Pennsylvania with the fact that this subject, like that of family desertion, had come to be very important, that it was worth while to bring such men back and make them support their illegitimate children under the laws of the state, and that there was no reason why they should be bound by the impression of a predecessor. Steps have been taken to do this, and as a further evidence of this change the legislature has recently included illegitimate children in re-enacting the non-support law from which it was necessary to leave them out in order to secure its passage four years ago.

Illegitimate children have also been brought within the scope of the desertion and non-support law in Minnesota in a revision of the laws relating to children, in which many other important improvements were also made, and thirty-five out of forty-three laws recommended by the Child Welfare Commission were enacted by the last legislature; but unfortunately no effort was made to overcome the mistaken impression as to the extradition of family deserters for misdemeanor. In fact, it seems to have been strengthened by the statement that although "it is not intended to imply that extradition for a misdemeanor is not provided for by law, experience shows that it is impracticable in Minnesota at the present time." The same tendency was followed further by increasing the possible penalty for desertion to five years in the state prison, although it was stated that juries hesitated to indict for the offense when the penalty was only one year.

The war is unifying the nation, causing it to act together with little regard for internal boundary lines. We ought to make the hindrance from them as small as possible in attacking the evil of desertion and non-support.

IMPORTANT TO FIND THE DESERTER.

In the very important matter of making extradition certain, the National Desertion Bureau has done admirable work in hunting down deserters, and it would be fortunate if similar systematic efforts were made by the authorities and by agencies dealing with such cases in other places, towards which a start has been made by the municipal

government in New York. In any large manufacturing business it is necessary to establish such safeguards in paying the employees that they shall not only not be able to take advantage of the paymaster, but that they shall not think that they can do so, and shall not try to. It is the aleatory instinct in man that leads him, in spite of so many failures, to try to make money on the stock market. One of the first objects which strikes the traveler in approaching Jerusalem is a large leper hospital in which such unfortunates can be comfortably cared for; but I remember vividly a pitiable leper who lay by the road near the Garden of Gethsemane asking for backshish, because he preferred taking his chances of getting money from the public to the monotony of institutional life. It is the chance of escaping obligations which have become tiresome which tempts men to leave their families and the state; and one of the most essential requisites for dealing effectively with such cases is to have them understand that they cannot do it successfully. The responsibility for this rests with those charged with looking up these cases and seeing that they are properly prosecuted.

AN EXTRADITION TREATY WITH GREAT BRITAIN.

Towards this the pending treaty with Great Britain will be a great help by making it possible to readily reach family deserters who escape from the United States to Canada, or from Canada to the United States. A request for this was made by the National Conference of Charities and Correction at its Cleveland meeting five years ago. In accordance with this the subject was taken up by the writer with the State Department in the following January. In spite of the hindrances of the war, such interest was displayed, not only by our State Department, but by the authorities of all the provinces in Canada and by the Foreign Office in England, that the completed treaty was signed in December last, and sent to the Senate for ratification.

Objection was there made to it by a Senator who considered it too drastic because he thought there were cases in which the wife ought not to have the power to compel her husband to return. It is admitted that there are cases in which a man ought to be brought back and punished for not supporting his wife, and the fact that this can only be done where the circumstances are such that the law of the state from which the man fled makes his conduct a criminal offense, and, therefore, a basis for a request for his return is apparently overlooked. The pressure of legislation necessary for the war has interfered with further consideration of other subjects, but it is hoped that this will

receive attention soon, so that Canada may no longer be a place of refuge for men who desert their families in the United States.

PROSECUTION WHEN BEGUN SHOULD BE VIGOROUS.

4. It is needless to say that the prosecution, which is equivalent to a declaration of war, should be followed up vigorously when once it is begun; not in the way of inflicting a retributive punishment, but of insuring future good conduct. The danger of moral deterioration because of a court sentence is usually less than that of lack of power in handling the cases for want of establishing the facts in the court with an overhanging sentence. The suspension of this sentence with an order for the payment of a weekly sum for support is advisable in ordinary cases; but if the record is such that this method is not likely to be effective unless preceded by a sufficient period of actual imprisonment, this punishment should be inflicted.

5. In the case of the suspended sentence the assistance of a competent and faithful probation officer is again of the utmost importance. The question of employment is fundamental, and this such a probation officer may be of great help in obtaining. The encouragement which such an officer can give will do much to keep the man diligently at his task when the inclination to again desert, or to yield to indolence or bad habits, comes over him. The knowledge that if he fails to make the weekly payment, or to take home his earnings to his family, he will be promptly apprehended by the probation officer restrains him from giving way to temptation in that direction; and the influence of a wise probation officer is so helpful in every way that it means, in many cases, the difference between good conduct with happiness, and further transgression with its failure and punishment. There is no better investment of public funds than to provide such a probation system in connection with Domestic Relations Courts and Juvenile Courts in these cases. Such a system there has been from the start in the Domestic Relations Court at Buffalo, the first in the country; and nothing has contributed more to the success of the work there, of which the large and increasing collections, totaling in 1915, more than \$145,000 paid into court and direct, are an important, but not the only result, than this admirable probation system.

COLLECTIONS ON ORDERS MUST BE FOLLOWED UP.

6. Closely related to the general subject of probation is the necessity of a systematic method of collecting the amounts payable on orders, or bonds, or otherwise, under suspended sentence. As the

Committee of Massachusetts Judges well says⁵ the probation officer "should follow up the payments as maturities are followed up in a bank. Promptness is the great preventive of delinquency." Men with weak wills, often with little energy, and usually with many temptations, must never be allowed to get behind in these payments. Many a man who can pay a few dollars a week for years will never under any circumstances be able to make up arrears of \$50.

The importance of this was so apparent in the District of Columbia that, in spite of the meagerness of the probation force, the Juvenile Court since last fall has had one of the officers who heretofore worked with children devote a considerable part of his time to following up adult cases of non-support. By thus taking immediate notice of any failure to comply with the order of court, the collections have been much improved, and the change has been amply justified. Next year, for the first time, the appropriation bill provides for a probation officer for adult cases, and the results are certain to show that the expenditure is well worth while.

A more striking proof as to this, because the amounts are larger, comes from the Municipal Court in Philadelphia. In April, 1915, the probation department induced the presiding judge and the board of judges to put three special men on to follow up the collection of non-support orders. A very considerable increase which resulted from this caused the judges to add more men for the follow-up work on orders in 1916, until now there are seven men who give their full time to this task, beginning when the order is two weeks in arrears. The following table, which gives the amount collected on non-support orders by the department of accounts in 1913, the year before the court was established, and by the court in the three following years, shows what a gain there has been because of this systematic work:

TABLE I.

NON-SUPPORT COLLECTIONS, MUNICIPAL COURT, PHILADELPHIA.

<i>Year.</i>	<i>Amount.</i>	
1913	\$329,989.08	By Department of Accounts.
1914	345,490.94	Municipal Court established.
1915	409,329.59	Three follow-up men put on in April.
1916	520,066.80	Follow-up men increased to 7 during year.

As Mrs. Rippin, the Chief Probation Officer, well says: "It is as much the duty of the Court to see that the order is carried out as it is to make the order"; and here again the certainty of operation makes the machinery go smoothly, with resulting happiness and comfort.

⁵Report on Criminal Remedies in Massachusetts for Failure to Furnish Support, 1916, p. 36.

COMPENSATION TO FAMILY FOR HARD LABOR IMPORTANT.

7. In dealing effectively with such cases, compensation to the family for the hard labor which should always accompany imprisonment is important. Such compensation connects the labor of the offender directly with the support of his family, for want of which he is imprisoned. It does not take many days for the evidence that the work which he is doing under compulsion would provide him, if voluntarily performed while doing his duty outside, with three times the amount which his family receives as compensation for it to demonstrate how utterly foolish his conduct is; and the feeling that on account of the compensation his wife can refrain indefinitely from asking for his release makes him all the more ready to yield to the inevitable and undertake the support of his family without resistance if permitted.

The experience of Ohio, of the District of Columbia,⁶ of Massachusetts, and of other states with laws which require the payment of compensation for labor performed in confinement has shown how simple, how direct, and how effective in securing support, such a provision is. Although its enforcement had not become general throughout the state, it was chiefly to secure compensation to the family that

⁶STATEMENT OF AMOUNTS COLLECTED BY THE JUVENILE COURT OF THE DISTRICT OF COLUMBIA FROM DELINQUENT HUSBANDS AND FATHERS, UNDER THE NON-SUPPORT LAWS OF THE DISTRICT, AND PAID TO THEIR WIVES OR OTHER CUSTODIANS OF THEIR CHILDREN, FOR THEIR SUPPORT, FROM JULY 1, 1906, TO JUNE 30, 1917.

Year Ending June 30.	Amounts appropriated for payment of 50 cents per day for labor performed by men committed to the workhouse.	Amounts paid to families on account of earnings of men committed to the workhouse.	Amounts collected by court from men placed on probation under suspended sentence, for support of their families.	Total Payments.
1907	\$ 200.00	\$ 200.00	\$ 6,050.59	\$ 6,250.59
1908	200.00	190.50	21,888.56	22,079.06
1909	2,400.00	2,340.00	38,319.65	40,659.65
1910	2,000.00	1,674.00	30,808.28	32,482.28
1911	3,500.00	3,448.50	38,684.97	42,133.47
1912	3,775.50	3,775.50	41,718.61	45,494.11
1913	5,500.00	5,057.00	46,774.79	51,831.79
1914	6,795.50	6,795.50	43,391.71	50,187.21
1915	5,315.50	5,315.50	42,309.59	47,625.09
1916	6,724.00	6,724.00	46,885.65	53,609.65
1917	*6,375.00	*6,375.00	45,892.46	52,267.46
Total.....	\$42,785.50	\$41,895.50	\$402,724.86	\$444,620.36

*The item for the year ending June 30, 1917, includes \$375.00 in the deficiency bill now before Congress, and although the beneficiaries will not actually get it until after passage, it is included in the year ending June 30, 1917, because earned by the men during that period and will be appropriated for that period.

the law declared unconstitutional last year was promptly re-enacted in Pennsylvania. It is unfortunate that, nevertheless, the new law in Minnesota omitted such a provision, so that when men are sent to jail there for non-support the family gets nothing; and that no such provision has been secured in New York, Rhode Island, and some other states where the effort to get it has been made.

It may also be noted that this feature was omitted in the Colorado law of 1911, and that nothing has ever been done under that provision of the Mothers' Compensation Act of 1913, which provides that work-houses shall be established for the detention and employment of men committed for non-support, and their earnings paid into the Mothers' Compensation Fund. The unwisdom of such a failure to connect a man's earnings with the support of his own family shows a vague conception of the essentials of the problem of desertion and non-support.

EXISTING LAWS SHOULD BE DILIGENTLY ENFORCED.

8. It is proper also to say that it is highly important to make the utmost use of the existing law, even though it is not as effective or comprehensive as it might be. In no other way can defects in the law be so well discovered and corrected. The worst possible condition, especially in regard to this perplexing subject, is to have a law which sounds well and seems to mean something, but which because of confusion or lack of interest on the part of some official is not adequately enforced.

This is especially true, not only in the matter of extradition, which has already been discussed, but also in regard to laws in several states which seem to afford compensation, but have not done so. The responsibility for the failure of these should be definitely fixed by a persistent effort to enforce them.

A law in Minnesota passed more than ten years ago provides that in sentencing any offender to jail or other place of imprisonment the court may require that all or part of the term of imprisonment be with hard labor; and that such labor may be in the jail or jail yard, or on public roads, streets, or elsewhere in the county.

An amendment to this law in 1913 provided that a reasonable compensation for the labor so performed might be paid to the wife or family of such prisoner as the court might direct, and in such an amount as the court might determine, and that it should be allowed by the board of county commissioners or the governing body of the municipality upon such order of court.

Such payments to the dependent families have not been made.

and the reason appears to be that the courts have not imposed such orders in passing sentence; yet the law which seems to make an adequate provision remains. The propriety of so providing for the dependents of men sentenced for non-support is beyond question, and if the fault is in the law, its defects ought to be revealed by an effort to enforce it.

GENERAL SOCIAL CONDITIONS NEED ATTENTION.

9. Beyond all this it may be said, that, just as it has been stated that in the making of a gentleman it is necessary to begin two or three generations before he is born, so the most effective way of dealing with cases of family desertion and non-support is to prevent them from happening. All the causes leading to divorce which Judge Hoffman has so well set forth in a recent paper on Domestic Relations Courts and Divorce,⁷ operate also in relation to non-support, and to desertion, which is often called the poor man's divorce. Men and women who are themselves more or less defective, with insufficient income for supporting children, even when all goes well, with a desire for the recreation to which many welfare workers of the present day insist that each person is entitled, and which is often interpreted to mean an excess of moving pictures and such diversions, with small appreciation of the responsibilities of family life and with little religious sentiment to carry them through the hard places when they appear, are allowed to marry without much hindrance by anybody. The results which might be expected from such a combination appear sooner or later in the Domestic Relations Courts. It would be far better if some moral teaching, some care in education, some supervision by the state in the case of applications for marriage licenses could diminish the number of ill-considered marriages. If the present war can only impress people more with the solemnity of life and bring them face to face with their responsibility to the Lord who created them male and female, and charged them with the responsibility for the future of the human race, there may be some gain in this respect in the face of the fearful destruction of so much of the best manhood of the warring nations.

⁷The Delinquent, February, 1917.

THE JOLIET PRISON AND THE RIOTS OF JUNE 5th

A. L. BOWEN¹.

June 5th, Registration Day, prisoners in the Joliet Illinois State Prison revolted, started a riot of intimidation and assault upon employees, set fire to buildings and shops and were thwarted in their plans for wholesale escape by federalized state militia. The riot attracted nationwide attention. Newspaper accounts were highly colored, but their substance was in the main a true picture.

The disturbance was quelled in a very short time. Property damage was small, notwithstanding that the rioters set fire to nearly all buildings in the compound. Not a shot was fired and the only casualty was the death of an aged prisoner who jumped from a burning building and fractured his skull. The prison was under military guard for nearly a month following the riot.

PHYSICAL CONDITIONS IN AND AROUND THE PRISON.

This affair is of interest to the student of prison questions because it teaches some severe lessons regarding discipline within prison walls.

Joliet prison is one of the old penal plants of the country. It was built sixty years ago; consequently, it is obsolete and inadequate. The cell houses, two in number, contain 900 stone cells, erected in blocks, four tiers high in one house and five in the other. The male population is nearly 1,700, of whom about 200 are on the honor farm, where extensive farming and gardening are in progress and a new prison is in course of construction. The 1,500 men residing in the old prison are forced into these 900 cells, which are not provided with toilet facilities and are too small for one man. Forced draft furnishes some relief. The cell houses are dark, the windows being narrow slits in the thick stone walls, and sunlight never penetrates the cells. Located across a narrow boulevard, to the south, are the immense plants of the U. S. Steel Company. Smoke, gases and a fine black dust, composed of iron, soot and cinders pour into the cell houses when the wind is from the south, southeast or southwest. To the east, across the main highway from Joliet to Chicago—a road traversed by thousands of automobiles and interurban trains—is a rock quarry, where stone is blasted, crushed into various sizes and

¹Superintendent of Charities for the State of Illinois, Acting Warden at Joliet Prison at the time of the strike.

shipped, free of charge, except freight, to cities and towns of Illinois for road construction. Four hundred prisoners, four times daily, pass through the east gates of the prison yard and cross this busy highway going to and coming from their work in this quarry.

The honor farm where the new prison is being erected, is located four miles northwest of the old prison. Twenty-two hundred acres of land are under cultivation. One hundred acres have been reserved for the new prison and yards. One hundred of the men on this farm labor on the new prison and the other hundred on the farm and garden and in the care of the quarters. There are no fences or walls about this colony. The men live in frame barracks. They are upon their honor to remain and to make good the drastic pledges they have taken. Of this farm I shall write later.

At the old prison the entire population eat in a congregate dining hall.

There are within the walls, a three-story hospital building, a steam power plant, a foundry, a shoe factory, a furniture factory, a reed and rattan furniture factory, a library, chapel and store house, kitchen, bakery and dining room, and the roofless ruins of several shop buildings which have been destroyed by incendiary inmates during recent years.

RECENT HISTORY OF THE PRISON MANAGEMENT.

For fourteen years prior to 1913, this prison had been under the wardenship of E. J. Murphy. He had introduced a number of reforms, such as the elimination of the lockstep and the striped suit and had erected the general dining room. He had given the men the privilege of conversation among themselves. But with all these changes to his credit—in those days looked upon as radical—Mr. Murphy was regarded as one of the old school of strict disciplinarians, meeting every emergency promptly and vigorously and, no doubt, often rigorously.

When Edward F. Dunne became the chief executive in 1913, he appointed as warden at Joliet, a fine looking, popular, young man of Joliet, Edmund M. Allen, whose father, in the nineties, had rendered distinguished service as head of this prison.

Gov. Dunne was known to believe in the most advanced theories of prison management and discipline. Mr. Allen entered upon his duties with the same views and at once set to work to put them into effect. It is scarcely exaggeration to say that the prison was transformed over night from one in which old fashioned methods had prevailed, to one in which privileges and liberties advocated by the most radical modernist, were granted to all alike. I wish to emphasize

here the fact that these privileges and liberties were granted to all without respect to personal fitness to enjoy them, individual conduct, merit or record.

Honor road camps were established. The public was freely admitted to the yards and shops. The new regime was given wide and generally favorable publicity. Mr. Allen tried to give the place a new personal touch which would bring the men into closer relationship with himself.

Of his sincerity of purpose I never have had doubt. I know the big heart that animated every act of Governor Dunne, and I must not be understood as criticising them for what they did or tried to do. Whether there are inherent defects in the system they advocated or simply in the technique of its application, I shall not attempt to discuss, though I am inclined to believe the fault lay in the latter rather than in the system itself. I wish only to record what took place in this prison and trace out for my readers the course that events took culminating in the riot of June 5.

Mr. Allen had served almost two years when the violent tragedy occurred in June, 1915, which shocked the whole nation. Its details are still fresh and I shall not recall them. Mr. Allen resigned soon afterwards and was succeeded by Mr. Michael Zimmer, who had made a fine record as a public official in Chicago. Mr. Zimmer continued the Dunne-Allen policies with certain modifications and restrictions. Some of the most glaring faults of the two years preceding were removed.

Mr. Zimmer's work attracted attention. The tragedy which I have just mentioned naturally had thrown the prison into great confusion. Incendiary fires and the murder of one prisoner by a fellow prisoner added to the complex situation which he confronted. An unrest and agitation that even the kindly attitude of Warden Zimmer or the liberties enjoyed by the men could not calm, handicapped him at every turn. Toward the men Mr. Zimmer was kindness and consideration personified. No man could ever do more to make prisoners satisfied and comfortable. He even jeopardized personal dignity to please them; to grant their requests he went far beyond the requirements of duty.

AD INTERIM WARDENSHIP AND THE MOB SPIRIT.

Soon after the election of Mr. Lowden as Governor of Illinois, Mr. Zimmer was selected as warden of the Cook County hospital and desired to enter upon that service on May 1. For seven years I had served as Executive Secretary of the State Charities Commission—an advisory body in the conduct of State charities, and had just been

appointed Superintendent of Charities, to begin service July 1. I had had nothing to do with the prisons and had not even visited them. When Mr. Zimmer asked to be relieved on April 30, I was instructed by telegraph to take charge of the prison pending the appointment of a permanent warden. The message instructed me to maintain the *status quo*. This I tried conscientiously to do.

I informed the prisoners on my first day that their privileges would not be interfered with during my short stay, that I did not intend to inaugurate any changes because the permanent warden on his arrival would desire to put into effect his own ideas; therefore, it would be unwise for me to make changes which could have no other effect than to complicate the situation and embarrass him. I could discern nothing in the faces of those 1,500 men to indicate what effect my words had produced.

For a day or two the daily grind was peaceful and regular. Then came a strike in the quarry; then followed a stabbing affray in the quarry; then came protests from guards and foremen against the insulting language of the prisoners. Foremen complained that men would not stay in their places of employment. Old employees warned me that hundreds were congregating at the east gate as the quarry gang came and went.

Quietly I made personal investigation. What had been told me was true. My own sympathetic attitude towards the men was being interpreted as weakness. I realized that all the disquieting predictions which accompanied me to Joliet and there repeated themselves were well founded. In less than a week I understood that, before long, serious trouble would occur, no matter who the warden or how trivial the inciting cause might be. Challenge was in the air. The spirit of revolt seemed to have substance, it was so apparent. Strangers and visitors felt it and remarked about it. Manifestly conditions could not continue without serious results. Seeing trouble ahead I prepared to meet it and when it came, the plans laid weeks before, proved to be adequate and workable, thwarting the obvious objective of the men and preventing loss of life.

It required only a day or two after my arrival for me to size up the situation and I can summarize it no better than in the three words: Idleness, money, women.

Idleness in this prison had been enforced upon it by contractors, manufacturers and labor unions. Here all these had made common cause to throw out industries which employed prisoners. And they had succeeded. A shirt factory, a broom factory, a school fixture factory and others had passed away, junking valuable machinery and cost-

ing the State large sums for equipment that was never allowed to get into full working order. Even the necessities of the prison were being purchased on the open market at retail prices when facilities and men to make them were idle within the walls. Idle hands found much to do.

Plotting and counterplotting was always in process. Incendiary fires had been frequent and oftentimes destructive; fighting and bloodshed were common. Two prisoners had been murdered in the dining room. Murder had been committed in the warden's home. Four convicts had killed themselves by drinking wood alcohol made from a combination of shallac and salt.

Combined with the evil of money in hand, this idleness brought about conditions which were intolerable. It may interest my readers to know how money came to be plentiful. First there was the traffic in contraband. There appeared to be specialized tradesmen in various kinds of junk. Iron pipe would be spirited out of the yards by one gang, brass castings and junk by another, lead junk by another. The machinery in the shops had been raided for its brass and copper. Fire extinguishers put up one day would be gone the next. Even the boilers which furnished heat were once robbed of their brass and valves. The clothes rooms suffered similar depredations; even shaving soap, razors and brushes were stolen in midnight raids. Liquor had been spirited into the compound. In all these evil practices, I have always felt the prisoners must have had, somewhere along the line, the help of employees. This theft on a heavy scale brought in much money. Friends contributed other funds.

"Tinkering" was a fruitful source. "Tinkering" had been inaugurated early in the Allen regime on a limited scale to provide the convict with a little spending money. Illustrating the convict's disposition to take his mile when allowed an inch, "tinkering" became the rage and grew beyond control by peaceful means. At first men were restricted to very small articles. But their product grew in size until it included rattan lamp stands four and five feet high, rocking chairs, settees and the like. A large room was necessary to hold and display their stock. While they were turning out poor product for the State, many convicts made delicate and exquisite inlaid boxes from scraps, and otherwise demonstrated their ability as craftsmen.

In the beginning men were allowed to tinker only after they had completed their daily task. But again they "fudged" on the State until many put in more time "tinkering" for themselves than in working for the public. It was admitted to me when I entered that this

evil had gained such a hold that it could not be eliminated by ordinary peaceful means.

With money and time at their disposal they gambled openly in the yards and shops; craps and card games were numerous. I saw them in abundance. Any effort by the guards to break them up met with a laugh and a continuation of the sport in another spot. When money ran out, the shirt on the back became the stake. Pitching horse shoes and like pastimes, guessing on the state of tomorrow's weather and similar issues formed an outlet for the gambling spirit.

Money was used also to corrupt employees and other prisoners. Men boasted to me they could buy anything they wanted and I saw enough to convince me they were telling the truth.

Then came the women. The prison was visited by hundreds of them weekly; young girls and matrons, old women, all bent on curiosity, all clothed in the sex exciting garb of the day, all parading and making a holiday for themselves within sight of men who, in their liberty, never restrained their passions, and now under duress, were forced to witness this spectacle.

Letter-writing women of the Oriental Esoteric League of Washington, D. C., had become a vicious nuisance. Hundreds of the Joliet prisoners were writing every week to women or young girls whom they had never seen or head of and were receiving prompt replies; many of these replies were suggestive; some were vulgar; some were insidious; some were forty or fifty pages long, written on scented linen paper and tied with baby blue ribbons; some breathed languorous love, some were merely friendly with good advice; some attempted to convert the men to this, that or other creed or cult. Such letters furnished sport for the men and they speculated upon the figures and faces of the writers. Requests for photographs were numerous and many of the men had succeeded in getting pictures of their fair correspondents. The suggestive letter was highly prized and the recipient was envied, while the fellow who received the kindly advice of an elderly woman was the butt of the joke. The prison censor could not begin to scan these letters. Men were neglecting their families to pursue the unknown.

One prisoner on his release promptly blackmailed the young woman he had been writing to and got \$450 of her money. Another rented quarters in the same building with his correspondent, who was a married woman. These women had commenced to visit the prisoners to whom they had been writing. Such correspondence was bound to create a desire to see each other. They were coming from Florida and Philadelphia and other far distant points.

Meanwhile the prison was disrupted on certain days by the visits of alleged sweethearts who had known the prisoners before their incarceration. One woman came to see a man whose name she had seen in a Chicago paper.

I was well aware that nearly all the men were armed with some sort of deadly weapon, some for offense and some for defense. A favorite was the stiletto made from a rat tail file. Another was a bludgeon, another a slug shot. After the riot, prisoners testified that practically all men in the place had from one to half a dozen weapons. I was informed that guns had been planted in the yards and that dynamite had been secreted in the cells. When the cells and shops were searched weapons were hauled away by the barrel full. Nearly all had been made from shop tools and materials. They ranged in size from a small razor to a meat cleaver and from a blackjack to a coupling pin. Guns were found several months after the riot. The dynamite was taken from the cells in the clean-up. Yet some have tried to convince me that these weapons were made in the shops and cells without the knowledge of employees. Some may have been, but others could not have been.

I held to my determination to do nothing which could be construed as a denial of any of their liberties, a repudiation of my promises, a change of policy or as a challenge. Yet I knew all the while that the day of reckoning was approaching.

IMMEDIATE CAUSES.

The hour came when something had to be done to prevent a wholesale delivery. Five weeks after my arrival I was forced to depart from my policy to issue no orders. Instructions were posted that all men must remain in their places of work during working hours and keep in line when going to their meals and to their cells. Many tried to secure modification of this rule, but I made no exceptions. The enticing of a negro prisoner from the Honor Farm by a woman, not related to him in any manner, caused the second order; namely, that no woman, not a wife, mother, sister or daughter of a prisoner would be permitted to enter the prison to make a personal visit.

These were the only rules issued during my six weeks' stay; they were the only modifications made in prisoners' privileges and liberties. Yet what was the result? They were made the excuse for an uprising, having for its object the destruction of the plant, the liberation of all who would go and death of any who might get in the way. I was given the alternative of a riot and a fight or an abject surrender and revocation of these reasonable and just regulations which in no man-

ner restricted any liberty to which men in prison walls could, by any stretch of the imagination, be considered entitled.

PRISON DISCIPLINE CREED.

After my experience of June 5 and succeeding days, I am supposed to be an advocate of the old rigorous system of discipline. I am not. I am decidedly in favor of privileges and liberties of every character within the prison walls. I believe in base ball, in all forms of athletic sports and games. I believe in a gymnasium and a big athletic field. I believe in an athletic director to teach men and to direct wholesome recreation. I believe in military discipline and in a crack band to furnish music on every possible occasion. I would have setting up drills for all the men, marches before breakfast and supper, squad, company, battalion and regimental drills. I believe in conversation at meals, but complete silence in the shops during working hours.

There should be liberal opportunity for letter writing. Relatives, bona fide friends of prisoners and others who may have good reason to visit a prison should be admitted freely, but indiscriminate curiosity seeking crowds should be prohibited.

Men should have the right of appeal to the warden and to address him in courteous and respectful manner.

Employment should be assigned with a view to the individual's future. Card games under strict supervision are permissible at the right time. There should be wholesome entertainment within the prison; music, lectures, motion pictures and the like. A reading room should be provided for the men of the first class. The men should be encouraged to work out their own home entertainments. Schools, vocational and manual classes, are essential.

But every one of these privileges should be a reward for good conduct and personal merit. Those who do not earn even the least of them should not be permitted to enjoy it. The model prisoner should have them all. This means classification. Classification is the first aid to discipline in any institution. This is difficult in Joliet, but it is not impossible. It requires ingenuity, alertness and co-operation on the part of the guards and foremen.

The privileges here endorsed can be granted only under strict discipline. A prison must be a place of discipline and order. It must teach discipline and order because these are the two main things which the prisoner's life in the open has lacked.

Prisoners must not be permitted to translate them into license. Some degree of self-government, to be extended as the men show capacity and self-restraint is advisable.

Changes in discipline which permit greater liberties to the men should be made slowly and gradually. This is a matter of evolution, so slow in its operation as to appear to be stationary. It must never be revolutionary. The men should not be conscious that it is taking place. It took fifteen years to eliminate mechanical restraint from the hospitals for the insane in Illinois, because the straps were dropped from patients one at a time. Freedom in the prisons must come in the same quiet, unobtrusive manner.

For the idleness the public is responsible. It should not tolerate interference with the authorities' efforts to find employment for these men. To confine them in idleness is vicious. It works a hardship upon the prisoner, by depriving him of a chance to occupy his time and mind, and to earn something for his dependents, and it reacts against the public by turning loose upon it men who are worse criminals than when they entered. A campaign of publicity to inform the public of the dire consequences of idleness in the prisons and exposures of the insidious and secret influences which enforce it upon the prisoner would correct conditions.

The public is responsible also for the evil results which flow in continuous stream from the old Joliet plant and must be charged with this responsibility. Because of its crowding, its lack of classification, its archaic plan, I cannot understand how it is possible for any man to live within its walls a year and emerge better for his experience. One is not surprised at insanity or the spread of tuberculosis and venereal infection. Sexual perversions are forced upon normal men by their cramped quarters. Every semblance of an ethical character is rudely snatched from them as soon as they enter their cells. Every avenue of descent in physical and moral being stands wide open. In such a place who would look for the upgrade?

As it stands today, the old Joliet prison is itself the pre-eminent criminal in Illinois; it violates all of society's and nature's laws in health, sanitation and morals; it breeds a class and a type that even the slums cannot furnish. Whatever of decency and spirit the prisoner may take in with him must soon dissolve in the miasma that permeates this place.

HONOR SYSTEM.

I must not close this article without a word about the honor system. In all fairness to the past, it should be explained that the term "honor system" applied only to the activities of the prisoners outside the prison walls upon the road camps and the farm. There was no honor system within the walls. There all men enjoyed equal rights and privileges, and frequently conduct, behavior and merit were not the decid-

ing considerations in picking men for the roads and farm; hence some of the failures which have been cited against the honor plan.

But the honor system as exemplified on the honor farm appeared to me to be practical and successful. Some disparaging things have been said against it, but with all that, I consider it possible of great development. Causes for all these criticisms are easily removed; in fact, had been removed before I left. The honor farm was opened in February, 1914. Up to the first of May this year, 580 men had been transferred from the prison to this farm, and only thirty-four of them had violated their pledges. The pledge is one of the severest tests to which a man might be put, and I doubt that so large a per cent of men under normal circumstances would succeed in living up to similar voluntarily assumed exactions in personal conduct.

At the farm there are temptations all about the honor man. A highway cuts through the farm within a few feet of the barracks. The avenues of escape toward Chicago are numerous and easy; they beckon, no doubt, with alluring temptations. As the technique of picking men and of interesting them in their work and their future improves, and as the proper contract between the administration and the prisoners is established, the number of mistakes and failures at the farm will grow less and less.

The men of this prison are going to return to free life. Why not afford them, on some such honor basis, a vestibule between prison and the free world. In this place they try their wings, they battle with their temptations, they grow strong, resourceful and resistive. They build up in strength and health. They fit themselves under these conditions for the next step.

With proper discipline, with visiting regulated, with women denied admission, who are not genuinely interested in the men by reason of blood or marital relations, with kindly yet firm men as employers and instructors, the honor farm scheme is certain to justify itself. In my opinion a place should be left for it in the scheme of the new prison where it may be developed and enlarged to the very limit.

JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE

CHESTER G. VERNIER AND WILLIAM G. HALE.

FROM WILLIAM G. HALE.

APPOINTMENT OF COUNSEL.

People v. Bopp, Ill. 116 N. E. 679. *Time for Preparation.*

Held, that it was an abuse of discretion of the court for a murder case to appoint counsel for the defense without giving him an opportunity for investigations or even to prepare his case. "It is not to be assumed that the appointment of counsel by the court for a person charged with crime, who is unable to procure counsel for himself, is an empty formality, and that the counsel thus appointed should be compelled to act, without being allowed a reasonable time in which to understand the case and prepare the defense. It is the duty of the court not only to appoint counsel of sufficient ability and experience to present the prisoner's defense and protect him from undue oppression, but the court should also appoint counsel who have no interest adverse to the prisoner which would interfere with a fair presentation of his defense, and time and opportunity should also be given to prepare for such defense."

CONFIDENCE GAME.

People v. Miller, Ill. 116 N. E. 131. *Breach of promise to marry.*

Where a woman, with no intention of marrying a man, promised to marry him solely for the purpose of obtaining his money and property, which she did obtain by such pretenses, she was not guilty merely of a breach of the marriage contract, but was guilty of an offense under the confidence game statute (Hurd's Rev. St. 1915-16. C. 38, 98, 99).

EMBEZZLEMENT.

People v. Dettmering, Ill. 116 N. E. 205. *Ownership of property.*

The ownership of property must be alleged with the same accuracy in embezzlement as in larceny.

In this case it was alleged that the money taken by the defendant belonged to a partnership, and certain individuals were named as among the partners, who, as shown by the proof, were not in the firm at the time of the alleged defalcation. Moreover, no evidence was introduced to negative the presumption of joint ownership, which arises from the allegation that the property belonged to a partnership, of which the evidence shows the defendant was a member. Fraudulent conversion must be of property belonging exclusively to a person other than the one charged.

EVIDENCE.

People v. McDonald et al. N. Y. Sup. Ct., Appel. Div. *Papers illegally seized.*

Held, that under the law of New York, documentary evidence which is relevant to the issue must be admitted in a criminal trial without inquiry as to whether it was seized in violation of the provisions of the Civil Rights Law,

which affirms the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures. Likewise as to evidence obtained by an illegal tapping of telephone wires.

INSTRUCTIONS.

People v. Wallace, Ill. 116 N. E. 700. *Reasonable doubt*.

With reference to instructions concerning proof of the accused's guilt, beyond a reasonable doubt, the court said: "We have more than once held that the giving of numerous instructions containing all the language restrictive of the application of the doctrine of reasonable doubt which it has been held in various cases not erroneous to give is improper, yet in this case, again two pages of the abstract are filled with five instructions, warning the jury against being misled by undue sensibility into regarding as reasonable doubts which were only chimerical or conjectural, and against going outside the evidence to hunt up doubts created by resorting to trivial and fanciful suppositions and remote conjectures. The object of instructing the jury is to give them a concise statement of the principles of law which they should apply to the case, and not an exhaustive treatise on those principles in detail. Two pages of discussion of the doctrine of reasonable doubt are not illuminating, but the reverse. Two lines are better."

MURDER.

People v. Ahrling, Ill. 116 N. E. 764. *Sanity. Burden of proof*.

Whenever the defense of insanity is interposed, it devolves upon the state to establish the sanity of the accused. If after all the evidence is in, the jury entertains a reasonable doubt of the sanity of the accused, he must be acquitted.

Weight of Evidence. While the verdict based on controverted questions of fact in a criminal prosecutions will rarely be disturbed, the Supreme Court will reverse a conviction where the evidence is of unsatisfactory character.

PERJURY.

People v. Brill, N. Y. Court of Gen'l Sessions, N. Y., 165 N. Y. Supp. 65. *Materiality of false testimony*.

In a prosecution for perjury the test is of materiality is not "whether as a matter of formality the testimony might have been included under the rules of procedure, or whether it was correctly admitted under the rules of evidence, but rather, having been received, being false, whether it was material matter, that is, whether it had probative value rationally to influence the result upon the merits.

Correction of false testimony. The following dictum is of interest. It is said that "even assuming the evidence was material, the indictment could not be sustained, for it appears from the record in the civil trial that this defendant's attention was not at first directed to the particular paper, and when a photographic copy of it was subsequently shown him he told the truth and admitted that he had signed it. The law encourages the correction of erroneous and even intentionally false statements on the part of a witness, and perjury will not be predicated upon such statements when the witness, before the submission of the case, fully corrects his testimony."

FROM CHESTER G. VERNIER.

EMBEZZLEMENT.

State v. McAvoy, R. I. 101 Atl. 109. *Defense of del credere factor.*

That an agent charged with embezzlement is a del credere factor of his principal constitutes no defense, such relation not changing the ordinary one existing between himself and his principal within. Gen. Laws, 1909, c. 345, par. 16, providing that every officer, agent, clerk, or servant who shall embezzle property, which shall have come into his possession by virtue of his employment, shall be deemed guilty of larceny.

INTOXICATING LIQUORS.

Hall v. State, Ariz. 165 Pac. 300. *Violation of law in good faith; mistake of fact.*

It is no defense to a sale in violation of prohibitory law that defendants relied on a guaranty of the brewers that the beer was non-intoxicating, and an investigation showing it did not contain enough alcohol to require an internal revenue license.

INTOXICATING LIQUOR.

State v. Kane, Dela. 101 Atl. 239. *Effect of repealing statute on existing license.*

James Kane was indicted for selling intoxicating liquor on April 27, 1917, in less quantity than one quart to be drank off the premises. The sale was made under a special license, issued to him on the 14th day of March, 1917, authorizing such a sale. The act under which the special license had been issued was repealed April 4th, 1917. Held, that since the repealing statute did not make the sale of intoxicating liquor unlawful, and contained no express provision concerning existing licenses issued under the repealed act, the license was good and the sale lawful.

JUDGES.

Harrison v. State, Ga. 92 S. E. 970. *Disqualification of trial judge.*

The trial judge was not disqualified from passing upon a motion for a new trial, because when imposing sentence, he had used language strongly indicating his belief in the guilt of the defendant. Any rational disinterested person compelled to give attention to the testimony adduced at a criminal trial, by reason of the fact that the proper conduct thereof rested upon him as presiding judge, must necessarily form some opinion as to the guilt or innocence of the accused. To hold that the expression from a trial judge of his opinion that the accused is guilty, after the jury has returned a verdict so finding, would effectually disqualify such judge from passing upon a motion for a new trial, and would negative the possibility of his fairly exercising his discretionary power to grant a new trial on a review of the evidence, or would either invite or insure rulings on questions of law raised in such a motion adverse to the defendant, would bring into question the impartiality of every trial judge who uttered a word of condemnation of the convicted criminal or the crime when imposing sentence, and would throw an unmerited cloud of suspicion upon his purpose to execute the law in accordance with his official oath where anything more was said than was simply necessary to indicate the punishment fixed by the judgment of the court. A rational, intelligent judge, acquainted with the law of evidence, necessarily reaches some opinion during the progress of the trial as to the guilt of the accused; but this opinion, whether or not expressed at the time sentence is imposed, is presumably not fixed and irre-

vocable, but subject to change upon a review of the record when the motion for a new trial is presented for determination.

LARCENY.

Gates v. State, Ga. 92 S. E. 974. *Is intoxicating liquor subject of larceny in a prohibition state?*

The tenth and eleventh grounds of the amendment to the motion for a new trial complains that the property alleged to have been stolen was of no value and was not property under the laws of the State of Georgia, and that the state failed to prove that the said property had any legal value, for the reason that Georgia was a prohibition state. There is no merit in this objection. There was proof as to the value of the stolen intoxicants, which were legally in the possession of a common carrier for inter-state transportation at the time of the burglary. Also, "value," as the word is used in prosecutions for larceny, does not necessarily mean money value or market value.

RAPE.

Gracy v. State, Okla. 166 Pac. 442. *Does use of narcotic constitute force?*

Under an information for rape which alleged that the defendant committed the offense "by force and violence, overcoming the resistance of the prosecutrix," as set forth in subdivision 4, Par. 2414, Rev. Laws 1910, evidence is admissible that the offense was committed by means of an intoxicating narcotic administered to her by the defendant or with his privity.

TRIAL.

State v. Gens, S. Car. 93 S. E. 139. *Misconduct of bystanders.*

Where, in a prosecution for bringing intoxicating liquor into the state, certain women sat directly in front of the jury holding large posters condemning the liquor traffic, which the jury saw and read, a new trial should have been granted, since their act was an attempt to impede justice, to deny the defendant a fair and impartial trial, and to influence the jury to arrive at a verdict improperly.

TRIAL.

Allen v. State, Okla. 165 Pac. 745. *Delegating reception of verdict.*

Where during the trial of a homicide case, the jury having retired to deliberate on their verdict, the judge was incapacitated from further proceeding with the trial on account of sickness, and by agreement of the parties, he designated an attorney of the court to receive the verdict of the jury.

Held, that the reception of the verdict in a criminal case is a judicial act, which cannot be delegated, and a verdict so received is a nullity, and that no judgment of conviction could be lawfully pronounced upon such a verdict.

Held, further, that the discharge of the jury under such circumstances must be deemed to have been with the consent of the defendant.

TRIAL.

Commonwealth v. Staush, Pa. 101 Atl. 72. *Passing sentence on plea of guilty without hearing evidence.*

Act of March 31, 1860 (P. L. 402) Sec. 74, providing that, where a defendant pleads guilty to an indictment for murder, the court shall proceed by examination of witnesses to determine the degree of the crime, must be strictly construed, and thereunder the examination of witnesses by the court means the seeing and hearing of the witnesses, and the mere reading of their testi-

mony by a judge or judges who did not see or hear them is not a compliance with the act.

Under such provision held that every member of a court passing upon the degree of guilt must see and hear the witnesses upon whose testimony the degree of homicide is to be determined, and where three of the five judges heard the testimony and thereafter the president judge, who was not present during the examination of witnesses, read the evidence, and joined in the deliberations, and wrote the court's opinion, fixing the crime as murder in the first degree, the judgment should be reversed, and a procedendo awarded with leave to defendant to renew in the court below a motion to withdraw his plea of guilty.

By MR. JUSTICE O'NEIL.

State of Louisiana

v.

Ernest Carmouche and George Chust.

} No. 22,296.

Appeal from the Twenty-first Judicial District Court, Parish of Point Coupee—C. K. Schwing, Judge.

The defendants have appealed from a verdict convicting them of cattle stealing and from a sentence of imprisonment in the penitentiary.

Two bills of exception were taken to the rulings of the trial judge ordering a juror discharged and another impaneled in his stead, after twelve jurors had been impaneled and sworn and the bill of indictment or information had been read to them.

The facts set forth in the two bills of exception were as follows: When the impaneling of the jury was completed, each of the defendants had used all of his twelve peremptory challenges and the state had used ten of its twelve peremptory challenges. The oath was administered to each of the twelve jurors impaneled to try the case, and the district attorney read to them the bill of information. It being then late in the evening, the court adjourned until the next morning. During the night, a juror named Beatty, who had been impaneled, and to whom the oath had been administered and the bill of information read, met with an accident, and was, in the opinion of the trial judge, physically unable to serve on the jury. When court convened on the following morning the judge announced that, on account of the physical disability of the juror, Beatty, it would be necessary to discharge him from the jury and select another juror from the talesmen who had been drawn and called the day before. The defendant's attorneys requested that the trial of the case be postponed, to allow the disabled juror time to recover and serve on the jury. In the alternative, the defendant's attorneys requested that, if the court should insist upon removing Mr. Beatty from the jury and the immediate drawing of another juror in his stead, then that each of the defendants should be allowed one or more peremptory challenge, because the state had yet two peremptory challenges, and, in using and exhausting their twenty-four peremptory challenges, the defendants had anticipated and believed that only twelve jurors would be impaneled, whereas the discharge of Mr. Beatty and the drawing of another juror in his stead would amount to the impaneling of thirteen jurors. The court ordered that the trial should be proceeded with immediately, by the discharge of the disabled juror, Beatty, and the drawing of another juror in his stead, and ruled that the defendants

would not be allowed another peremptory challenge in the drawing of a juror to take the place of Mr. Beatty. It appears that Beatty was the sixth juror impaneled, and that, when the state and the defendants accepted him as a juror, the state had used two peremptory challenges, the defendant, Chust, had used seven, and the defendant, Carmouche, had used five. To the rulings stated above, the defendant's attorneys reserved a bill of exceptions and announced that they would take part in the selection of another juror only under protest.

The remaining tales jurors who had been drawn and called on the day previous, were then called on their *voire dire*, and, the list of talesmen being exhausted, the court ordered other talesmen drawn and called. The district attorney was permitted to exercise his right to challenge peremptorily two of the tales jurors who were called on their *voire dire*. The district attorney finally accepted a juror to take the place of Beatty, and the attorneys for the defendants challenged him peremptorily. The district attorney objected to the peremptory challenge, on the ground that the defendants had exhausted their peremptory challenges in the original drawing of the jury. The court sustained the objection and the juror was impaneled and sworn, and served on the jury. To that ruling, the defendant's attorneys reserved another bill of exceptions.

There is no merit in the bill of exceptions taken to the ruling of the court, refusing to postpone the trial long enough for the disabled juror to recover. He was suffering from a broken arm, and the judge exercised his discretion wisely in removing him from the jury instead of postponing the trial long enough for him to recover from such an injury.

It is well settled that the trial judge may, after the jury has been impaneled and sworn, discharge a juror who has become physically incapable of serving on the jury. See *State v. Costello*, 11 La. Ann. 283; *State v. Diskin*, 34 La. Ann. 919; *State v. Lawson*, 36 La. Ann. 275; *State v. Moncla*, 39 La. Ann. 868, 2 South. 814; *State v. Nash & Barnett*, 46 La. Ann. 194, 14 South. 607; *State v. Duvall*, 135 La. 710, 65 South. 904.

If an incompetent juror who has been impaneled and sworn be discharged from the panel before the trial is commenced by the reading of the indictment to the jury, the defendant is not entitled to have his peremptory challenges restored to him, or to have the remaining 11 jurors re-tendered on their *voire dire* for acceptance or rejection, even though the defendant had exhausted his peremptory challenges when the disqualified juror was discharged. But, if a juror be removed from the panel for any cause, against the protest of the defendant, after the trial has commenced by the reading of the indictment to the jury, the discharging of the disqualified juror and the drawing of another juror in his stead is, in effect, the entering of a mistrial and the beginning of a new trial; and the defendant is then entitled to have his peremptory challenges restored to him and to have the remaining 11 jurors re-tendered on their *voire dire* for acceptance or rejection, especially if the defendant's peremptory challenges were exhausted in the original drawing of the jury. See *State v. Moncla*, 39 La. Ann. 868, 2 South. 814; *State v. Nash & Barnett*, 46 La. Ann. 194, 14 South. 607; *State v. Duvall et al.*, 135 La. 710, 65 South. 904; 14 Cent. Dig. Crim. L. So. 302; Bishop's Cr. Proc. No. 809. In the case last cited, *State v. Duvall et al.*, where the disqualified juror was discharged after the indictment had been read to the jury, the defendants did not insist upon having

their peremptory challenges restored to them or the remaining 11 jurors re-tendered on their *voir dire* for acceptance or rejection. They asked merely "that the remaining 11 jurors be sworn *de novo* to try the case." It was held, on rehearing, that that request implied an acceptance of the 11 jurors by the defendants, and that the re-swearing of the jurors to try the case would have been an idle and useless ceremony.

In this case also, the request of the defendants, that only one peremptory challenge be restored to each of them, was an implied acceptance of the remaining 11 jurors who had been sworn to try the case. The defendants were entitled to have a mistrial entered and a new trial commenced by having the remaining 11 jurors discharged from the panel, having the twelve peremptory challenges restored to each of the defendants, and the impaneling of the jury commenced anew. But they did not demand that. On the contrary, they waived that privilege by accepting the remaining 11 jurors who had been impaneled and sworn. They were not then entitled to another peremptory challenge. The defendant is not, under any circumstances, entitled to more than twelve peremptory challenges. *State v. Nash & Barnett*, 46 La. Ann. 193, 14 South. 607; *Jackson v. State*, 78 Ala. 471; *State of North Dakota v. Hasle-dahl*, 16 L. R. A. (N. S.) 152. It must be borne in mind that the defendants had each exhausted their twelve peremptory challenges in the selection of the twelve jurors, of whom they were willing that 11 should be retained; and they were not any more entitled to another peremptory challenge than if the juror who became incapacitated to serve after he was impaneled had been excused from the jury before he was sworn to try the case. The refusal to allow either of the accused more than twelve challenges in the impaneling of the jury was a correct ruling.

Two other bills of exception were taken to the rulings of the judge in admitting certain testimony that was objected to as hearsay evidence. The evidence was admitted against one of the defendants, because the trial judge concluded that the declaration made by the third party, not under oath, was made in the presence and hearing of that defendant without contradiction or protest on his part. The testimony on the question, whether the defendant heard or was near enough to hear, the statement that was introduced in evidence against him, was not reduced to writing, in accordance with the Act No. 113 of 1896; and the facts recited in the bill of exceptions do not warrant our reversing the ruling.

The verdict and sentence appealed from are affirmed.

Syllabus.

(1) If a juror becomes physically disabled after the jury has been impaneled and sworn in a criminal case, the trial judge has authority to discharge the disqualified or disabled juror and immediately order another juror drawn in his stead.

(2) If the discharge or removal of a disqualified juror who was impaneled and sworn for the trial of a criminal case be made before the indictment is read to the jury, the defendant is not entitled to have his peremptory challenges restored to him or to have the remaining 11 jurors re-tendered for acceptance or rejection, even though the defendant had exhausted his peremptory challenges when the disqualified juror was discharged.

(3) If a juror be removed from the panel for any cause, against the protest of the defendant, after the trial has commenced by the reading of the

indictment to the jury, the discharge of the disqualified juror and the drawing of another juror in his stead, is, in effect, the entering of a mistrial and the beginning of a new trial; and the defendant is then entitled to have his peremptory challenges restored to him, and to have the remaining 11 jurors re-tendered for acceptance or rejection, especially if the defendant's peremptory challenges were exhausted in the original drawing of the jury. But, if the defendant, instead of requiring that the 12 peremptory challenges be restored to him and that the remaining 11 jurors be re-tendered for acceptance or rejection, accepts them, he is not entitled to another or thirteenth challenge.

(4) If the defendant, appealing from a conviction in a criminal prosecution, fails to avail himself of the privilege accorded him by the Act No. 113 of 1896, of having the evidence on a question of fact on which an adverse ruling of the trial judge was based, reduced to writing and embodied in the transcript of appeal, the Supreme Court will accept the statement made or approved by the trial judge in the bill of exceptions.

W. O. HART, New Orleans.

NOTES AND ABSTRACTS

ANTHROPOLOGY—PSYCHOLOGY—LEGAL—MEDICINE

Intelligence Testing and Testimony.—It is now an accepted fact that securing data on the mental level of delinquents is of value in determining how their acts shall be judged and punished. But a recent occurrence in our clinic seems to indicate that psychological tests may also be of service in evaluating evidence.

There came to the clinic two sisters, Henrietta, thirteen and a half, and Helen, who lacked two months of being sixteen. The mother had died two years before. After her death they lived with the father, either alone or having housekeepers. The father made good wages, seemed intelligent, but drank to some extent. He had been cruel to the mother.

The last housekeeper, a Mrs. D., had reported to the probation office that ever since the mother's death, the father had slept with both girls and abused them sexually, and that they had confessed the whole thing to her. The girls, when questioned separately by the probation officer, told the same story in every detail as the housekeeper had told, and their stories agreed perfectly. They gave details of the most revolting kind, showing knowledge which could be gained only by an habitue of houses of prostitution of the worst kind, so bad, in fact, that their probation officer, though a woman of years of experience in her work, could not even understand part of the time what they were talking about.

On the other hand, the father denied the charges absolutely and totally. He said that the housekeeper was angry at him, which she herself admitted, and that she had made up the whole thing out of whole cloth and had coached the girls in the story. In addition, it happened that when the probation officer questioned Mrs. D. concerning her own past and any references she might be able to give as to her personal probity, she was angered, confused, and refused to reply.

The penalty for the offense is a serious one, and it became necessary to prove beyond doubt which side was telling the truth. The question was: Could the girls themselves make up the story, or could they be coached by the housekeeper to tell such a story?

They were brought to the clinic for the purpose of establishing their mental level. If they proved to be feeble-minded, their testimony would probably be taken as coaching from the housekeeper, the retention of it being made possible by the wonderful memory so often found in the feeble-minded. However, if they proved to be normal, the possibility of coaching was still not eliminated.

The Terman revision of the Binet was given in routine form. The girls both proved to be borderline cases, their intelligence quotients hovering near 75%. The older girl, Helen, was far the more robust physically of the two and in every way showed less effects from her father's abuse. She was about to graduate from grammar school, but had had a hard time getting through, because, as she said, "My mind just wouldn't seem to work until lately," meaning by "lately" since she had been relieved from her father's sexual insistence. The younger girl, Henrietta, however, was not only depleted physically by her experiences, but she showed the same interesting dissolution of intelligence

which the writer has observed so often in the adult women vagrants. She was also markedly melancholic, apathetic, suffered from bad dreams and phobias.

But these general facts were of no use in solving the question as to which evidence was to be trusted, the father's or the girls'. Some particular facts brought out by the examination were of startling interest, however. The first was that both girls were decidedly lacking in imagination. This was so marked as to render it quite impossible to suppose that either one could have imagined the long tale of the harrowing experiences of years, with the wealth of revolting detail which they had given. Still more interesting was the memory lack. Neither could repeat six digits, as they appear in the 10-year group. Neither one could give the memories from the simple story in the same group. They not only could not give a sufficient number of memories, but those which they did give were confused. This memory lack stood out from the rest of the tests as an abnormality of most exceptional nature. The younger girl even failed to remember the most ordinary facts of her life, unimportant matters which she would have no reason to conceal and yet which any ordinary person would be able to recall. To think that the girls could remember coaching as to testimony which involved a multitude of happenings with the details pertaining to each and purporting to extend back for a couple of years, and that they could, when questioned separately, and by many different individuals, hold correctly to the same story, the story itself having no foundation in fact, was the height of absurdity.

The girls' evidence was taken as a true representation of fact, the father's was considered false and he was committed to the penitentiary.—*Vinnie C. Hicks*, Psychological Clinic, Oakland Schools.

COURTS—LAWS.

Act Establishing The Connecticut State Farm for Women.—The following bill was passed by the General Assembly of the State of Connecticut at its January Session, 1917, and is now a law:

Be it enacted by the Senate and House of Representatives in General Assembly convened:

SECTION 1. A state reformatory for women to be known as the Connecticut State Farm for Women is established.

SEC. 2. The Connecticut State Farm for Women shall be under the management of seven directors, who shall be appointed by the Governor, and at least three of whom shall be women. Within sixty days after the passage of this act the Governor shall appoint one director for one year, one for two years, one for three years, one for four years, one for five years, one for six years and one for seven years; from the first day of the next month after their appointment and annually thereafter the Governor shall appoint one director for seven years. He shall also fill by appointment any vacancies that may occur for the unexpired term or terms thereof. All such appointments shall be of a non-partisan character. The governor shall have power to remove any of said directors for cause. The directors shall receive no compensation for their services, but shall be paid their necessary expenses incurred while engaged in the performance of their official duties. There shall be at all times a representation of at least three women upon said board of directors.

SEC. 3. The directors are authorized to purchase in the name of the state, as a site for said farm, not less than two hundred acres of suitable land. Such land shall include woodland and tillable pasture, with a natural water

supply, and be located reasonably near a railroad. The board of directors are authorized to use if practicable, for the purpose of said institution, any site already in use by this State.

SEC. 4. The directors shall cause to be prepared plans and specifications for remodelling or erecting on such site necessary buildings for a suitable plant for the institution, which plans shall provide for cottages to be arranged for the proper classification of inmates, as to the character and needs of such inmates. The directors shall furnish and equip the same ready for use. Contracts shall be made by the directors and those calling for an expenditure of over five hundred dollars shall be duly advertised and competitive bids received thereon. In connection with the remodelling or erection of the various cottages and buildings comprising the plant of the institution, no building permit shall be required from the municipal corporation in which the institution may be located. When such buildings have been prepared and equipped, and the necessary staff of officers been organized the directors shall so certify to the Governor, who thereupon shall issue a public proclamation that the institution is ready for the reception of inmates.

SEC. 5. The sum of fifty thousand dollars is appropriated for the purchase of a site for the institution and for the preparation of the buildings necessary to start the institution and to make it ready for the reception of inmates and for the payment of salaries and running expenses for the two fiscal years after the passage of this act.

SEC. 6. The directors shall have control of the institution; determine the policy of the same and make necessary rules for the discipline, instruction and labor of inmates; form a board of parole and discharge; cause to be kept proper records, including those of inmates; fix the salaries of the officers of said institution; appoint from their own number a president and a secretary, who shall hold office for such length of time as the board may determine; hold meetings at least quarterly at said institution and audit the accounts of the superintendent quarterly. They shall report annually to the Governor, the general and financial condition of said institution, with such recommendations as they may desire to make, a copy of which report shall be sent to the Secretary of each State.

SEC. 7. The directors shall appoint and remove at discretion, a superintendent of said institution, who shall be a woman, not of their number, and who, before entering upon the duties of her office, shall give a bond to the State, with sufficient surety in the sum of five thousand dollars, and shall be sworn to a faithful performance of her duties. The superintendent shall receive such compensation as shall be fixed by the directors and shall reside at said institution.

SEC. 8. The superintendent shall manage said institution and have control over the inmates thereof, and shall make rules and regulations for the administration of said institution, subject to the approval of the board of directors. The superintendent shall, also, subject to the approval of the board of directors, determine the number, select, appoint and assign duties of all subordinate officers of said institution, who shall be women, as far as practicable, and shall be sworn to a faithful performance of their duties. There shall be a deputy superintendent and, as soon as the size of the institution demands it, a resident woman physician and a clerk. The superintendent may remove any officer appointed by her. The clerk of the institution shall give a bond to the State with sufficient surety in the sum of five thousand dollars.

SEC. 9. Women over sixteen years of age belonging to any of the following classes may be committed by any court of criminal jurisdiction to said institution; first, persons convicted of, or who plead guilty to the commission of felonies; second, persons convicted of, or who plead guilty to the commission of misdemeanors, including prostitution, intoxication, drug-using, disorderly conduct; third, unmarried girls between the ages of sixteen and twenty-one years, who are in manifest danger of falling into habits of vice or who are leading vicious lives, and who may be convicted thereof in accordance with the provisions of chapter 223 of the public acts of 1905 as amended by chapter 48 of the public acts of 1907. Only such offenders, however, may be committed to said institution, as in the opinion of the trial court, will be benefitted physically, mentally or morally by such commitment, and immediately upon commitment a careful physical and mental examination, by a competent physician, shall be made of the person committed. The court imposing a sentence on offenders of either class shall not fix the term of such commitment. Commitment to said institution shall be made within one week after sentence is imposed, by the sheriff when sentenced by the Superior Court, and by a police officer when sentence is imposed by any city, town or borough court, but no offender shall be committed to such institution without being accompanied by a woman in addition to the officer. The expenses of such commitment shall be paid the same as commitments to other penal institutions in the State. The trial court shall cause a record of the case to be sent with the commitment papers on blanks furnished by the institution. The duration of such commitment, including the time spent on parole, shall not exceed three years, except where the maximum term specified by law for the crime for which the offender was sentenced shall exceed that period, in which event such maximum term shall be the limit of detention under the provisions of this act, and in such cases it shall be the duty of the trial court to specify the maximum term for which the offender may be held under such commitment.

SEC. 10. Said board of directors shall constitute a board of parole and discharge. Any inmate of the institution, who has been in confinement within said institution, may, upon recommendation of the superintendent, be allowed to go on parole in the discretion of a majority of said board of parole under the following conditions: That she is in good physical condition, has ability to earn an honest living, has a satisfactory institutional record, based on the merit system and a proper home to which she may go, or that suitable employment has been secured in advance by the board of parole. Each person paroled or discharged from said institution shall be given, if the superintendent deems it best, suitable clothing, transportation expenses and not more than five dollars. Authority is conferred on said board of parole to establish such rules and regulations as it may deem necessary, setting forth the conditions upon which inmates may be discharged upon parole, and to enforce such rules and regulations and provide suitable supervision by agents of the institution.

SEC. 11. While upon parole, each inmate of said institution shall remain in the legal custody and under the control of the board of directors, and subject at any time to be taken back to said institution for any reason that shall seem sufficient to said board. Whenever any paroled inmate of said institution to serve the unexpired term of her maximum sentence, including the time she shall violate her parole and be returned to the institution, she may be required was out on parole or any part thereof in the discretion of the board of direc-

tors, or she may be paroled again if said board of parole so decide. The request of said board of directors, or any person authorized by the rules of said board, shall be sufficient warrant to authorize any officer of said institution or any officer authorized by law to serve criminal process within this State, to return any inmate on parole into actual custody; and it shall be the duty of police officers, constables and sheriffs to arrest and hold any paroled inmate when so requested, without any written warrant, and, for the performance of such duty, the officer performing the same, except officers of said institution, shall be paid by the board of directors of said institution out of the institution funds such reasonable compensation as is provided by law for similar services in other cases.

SEC. 12. If any inmate shall escape from said institution or from any keeper or officer having her in charge or from her place of work while engaged in working outside the walls of said institution, she shall be returned to said institution when arrested, and may be disciplined in such manner as the board of directors may determine. All the provisions of section eleven relating to the arrest and return of paroled inmates shall apply to the arrest and return of escaped inmates.

SEC. 13. The board of directors may transfer to the state prison, or to the jail of the county from which she was sentenced, any inmate of said institution who shall appear to said board to be incorrigible, or whose presence in said institution may be seriously detrimental to its well-being, provided such inmate might have been originally so committed, subject to be returned upon requisition of the board of directors. The directors may transfer to any other appropriate state institution, any inmate whose welfare, the board, after proper study and examination of her case, shall decide may be best cared for at such other institution. Whenever any inmate of said institution shall be, in the judgment of the board of directors, in need of special medical attention, such inmate may be transferred to a hospital or other appropriate state institution, subject to return upon requisition of the board of directors. The board of directors may transfer to the Connecticut hospital for the insane any inmate of said institution who may be insane, but no inmate of said institution shall be transferred except upon the written certificate of two competent physicians not connected with the institution to the effect that such inmate has become insane, and any inmate declared to be insane shall have a right to appeal to the Superior Court for the county in which said institution is located from said order of transfer. Upon the written certification of the superintendent of the Connecticut hospital for the insane that an inmate transferred has become cured of her insanity, the directors shall, by requisition, require the return of such inmate to said institution.

SEC. 14. If it shall appear to said board of directors, acting as a board of parole and discharge, that any inmate on parole, although not having yet reached her maximum term, has maintained a satisfactory parole record, and will continue to lead an orderly life if discharged, said board, by a unanimous vote of all the members present at any stated meeting thereof, may discharge such inmate from said institution.

SEC. 15. If any woman committed to said institution is, at the time of her commitment, the mother of a child under one year of age, such woman may retain such child in said institution until it attains the age of two years, when it must be removed therefrom. The board of directors may cause such child

to be placed in an asylum for the children in this state and pay for the care and maintenance of such child therein at the rate fixed by law until the mother of such child shall be discharged, or may commit such child to the care and custody of some relative or proper person willing to assume such care and pay for such child at the same rate if deemed necessary. Any child of a woman committed to said institution who is over one year of age at the time its mother's commitment, and which might otherwise be left without proper care or guardianship, shall be committed by the trial court, upon the same terms as to payment as herein provided, to each asylum for children as may be provided by law in this state for such purpose, or to the care and custody of some relative or proper person willing to assume such care. If a child shall be born to any woman while an inmate of said institution, such child may be retained in said institution until it shall be two years of age, when it must be removed therefrom. The board of directors may cause such child to be placed in an asylum for children in this state and pay for the care and maintenance of such child therein at the rate fixed by law until the mother of such child shall have been discharged, or may commit such child to the care and custody of some relative or proper person willing to assume such care, and pay for such child at the same rate if deemed necessary.

SEC. 16. The state board of charities shall have, with reference to said institution, the same authority that is conferred upon said board by sections 2858 and 2862 of the general statutes with reference to the state prison as amended by chapter 94 of the public acts of 1913.

SEC. 17. The bodies of inmates who die in said institution may, if unclaimed for a period of twenty-four hours, be at the disposal of the professors of anatomy and surgery in the medical school of Yale University, to be used for the purpose of advancing medical science in this state, and shall be subject to their order.

SEC. 18. The board of directors in making rules and regulations for the government of said institution, shall make provision for a system of general and vocational instruction, including useful trades and domestic science, and for proper recreation facilities.

SEC. 19. This act shall take effect from its passage except such provisions as provide for the commitment, custody and treatment of inmates which shall take effect upon the issuance of the proclamation by the governor as provided in section four.

Fourth Tentative Draft of Act Reported by the Committee on Vital and Penal Statistics.—[This is the same as the third draft with certain changes in the language of Section 23 to make its meaning clearer, with the addition of clauses in Sections 7 and 14 relating to judgments as to paternity, and of certain footnotes calling attention to civil service provisions, and actions in Minnesota based on the work of the Committee on Vital and Penal Statistics.

This act has been endorsed in principle by the National Conference of Commissioners on Uniform State Laws.]

A Bill—To Provide for the Registration of All Births, Still Births and Deaths in the State of ———.

Note.—After the bill has been prepared for presentation to the legislature of a state, the title should be carefully revised by competent legal authority.

Be it enacted by the People of the State of ——— represented in the General Assembly:

SECTION 1. That the State Board of Health shall have charge of the registration of births and deaths; shall prepare the necessary instructions, forms and blanks for obtaining and preserving such records and shall procure the faithful registration of the same in each primary registration district as constituted in Section 3 of this act, and in the central bureau of vital statistics at the capital of the state. The said board shall be charged with the uniform and thorough enforcement of the law throughout the state, and shall from time to time recommend any additional legislation¹ that may be necessary for this purpose.

Sec. 2. That the Secretary of the State Board of Health shall have general supervision over the Central Bureau of Vital Statistics, which is hereby authorized to be established by said board, and which shall be under the immediate direction of the State Registrar of Vital Statistics, whom the State Board of Health shall appoint within thirty days after the taking effect of this law, and who shall be a medical practitioner of not less than five years' practice in his profession, and a competent Vital Statistician. The State Registrar of Vital Statistics shall hold office for four years and until his successor has been appointed and has qualified, unless such office shall sooner become vacant by death, disqualification, operation of law, or other causes. Any vacancy occurring in such office shall be filled for the unexpired term by the State Board of Health. At least ten days before the expiration of the term of office of the State Registrar of Vital Statistics, his successor shall be appointed by the State Board of Health ^{1a}. The State Registrar of Vital Statistics shall receive an annual salary at the rate of——dollars from the date of his entering upon the discharge of the duties of his office. The State Board of Health shall provide for such clerical and other assistants as may be necessary for the purposes of this act, who shall serve during the pleasure of the board, and shall fix the compensation of persons thus employed within the amount appropriated therefor by the legislature. The custodian of the capitol shall provide for the bureau of Vital Statistics in the state capitol at——, suitable offices, which shall be properly equipped with fireproof vault and filing cases for the permanent and safe preservation of all official records made and returned under this act.

Sec. 3. That for the purposes of this act the state shall be divided into registration districts as follows: Each city, each incorporated town, and each township² shall constitute a primary registration district; provided, that the

¹The words "and shall promulgate any additional rules or regulations" may be inserted in bills prepared for states in which the State Board of Health has power to make rules and regulations having the effect of law.

^{1a}The subject of Civil Service should be kept in mind in this connection and care should be taken to see that at least the subordinate positions, are placed under the Civil Service system where the state has a reasonably satisfactory one.

²Or other primary political unit, as "town," "precinct," "civil district," "hundred," etc. When there are no such units available the following substitutes for Section 3 may be employed: Section 3. That for the purposes of this act the state shall be divided into registration districts as follows: Each city and each incorporated town shall constitute a primary registration district; and for that portion of each county outside of the cities and incorporated towns therein the State Board of Health shall define and designate the boundaries of a sufficient number of rural registration districts, which district it may change or combine from time to time as may be necessary to insure the convenience and completeness of registration.

State Board of Health may combine two or more primary registration districts when necessary to facilitate registration.

Sec. 4. That within ninety days after the taking effect of this Act, or as soon thereafter as possible, the State Board of Health shall appoint a local registrar of vital statistics for each registration district in the state.³ The term of office of each local registrar so appointed shall be for four years, and until his successor has been appointed and has qualified, unless such office shall sooner become vacant by death, disqualification, operation of law, or other causes; provided, that in cities where health officers or other officials are, in the judgment of the State Board of Health, conducting effective registration of births and deaths under local ordinances at the time of the taking effect of this Act, such officials may be appointed as registrars in and for such cities, and shall be subject to the rules and regulations of the State Registrar, and to all of the provisions of this Act. Any vacancy occurring in the office of local registrar of vital statistics shall be filled for the unexpired term by the State Board of Health. At least ten days before the expiration of the term of office of any such local registrar, his successor shall be appointed by the State Board of Health.

Any local registrar who, in the judgment of the State Board of Health, fails or neglects to discharge efficiently the duties of his office as set forth in this Act, or to make prompt and complete returns of births and deaths as required thereby, shall be forthwith removed by the State Board of Health, and such other penalties may be imposed as are provided under Section 22 of this Act.

Each local registrar shall, immediately upon his acceptance of appointment as such, and at such other times as may be necessary, appoint a deputy, whose duty it shall be to act in his stead in case of his absence or disability, and who may be removed by him; and such deputy shall in writing accept such appointment, and be subject to all rules and regulations governing local registrars. And when it appears necessary for the convenience of the people in any rural district, the local registrar is hereby authorized, with the approval of the State Registrar, to appoint one or more suitable persons to act as sub-registrars, who shall be authorized to receive certificates and to issue burial or removal permits in and for such portions of the district as may be designated; and each subregistrar shall note, on each certificate, over his signature, the date of filing, and shall forward all certificates to the local registrar of district within ten days, and in all cases before the third day of the following month; provided, that each subregistrar shall be subject to the supervision and control of the State Registrar, and may be by him removed for neglect or failure to perform his duty in accordance with the provisions of this Act or the rules and regulations of the State Registrar, and shall be subject to the same penalties for neglect of duty as the local registrar.

Sec. 5. That the body of any person who death occurs in this state, or

³This method of appointment of local registrars by the State Board of Health—or perhaps by the State Registrar or upon his nomination—with a reasonably long term of service and subject to removal for neglect of duty, is the preferable one for efficient service. Should there be objection, however, to the creation of new offices, the section may be redrafted so that it will provide that township, village or city clerks, or other suitable officials, shall be the local registrars.

which shall be found dead therein, shall not be interred, deposited in a vault or tomb, cremated or otherwise disposed of, or removed from or into any registration district, or be temporarily held pending further disposition more than 72 hours after death, unless a permit for burial, removal, or other disposition thereof shall have been properly issued by the local registrar of the registration district in which the death occurred or the body was found.⁴ And no such permit shall be issued by any registrar until, wherever practicable, a complete and satisfactory certificate of death has been filed with him as hereinafter provided; provided, that when a dead body is transported from outside the state into a registration district in——for burial, or other disposition, the transit or removal permit, issued in accordance with the law and health regulations of the place where the death occurred, shall be accepted by the local registrar of the district into which the body has been transported for burial or other disposition, as a basis upon which he may issue a local permit; he shall note upon the face of such permit the fact that it was a body shipped in for interment, or other disposition, and give the actual place of death and no local registrar shall receive any fee for the issuance of such permits under this Act other than the compensation provided in Section 20.

SEC. 6. That a stillborn child shall be registered as a birth and also as a death, and separate certificates of both the birth and the death shall be filed with the local registrar, in the usual form and manner, the certificate of birth to contain in place of the name of the child, the word "stillbirth"; provided, that a certificate of birth and a certificate of death shall not be required for a child that has not advanced to the fifth month of uterogestation. The medical certificate of the cause of death shall be signed by the attending physician, if any, and shall state the cause of death as "stillborn," with the cause of the stillbirth, if known, whether a premature birth, and, if born prematurely, the period of uterogestation, in months, if known; and a burial or removal permit of the prescribed form shall be required. Midwives shall not sign certificates of death for stillborn children; but such cases, and stillbirths occurring without attendance of either physician or midwife, shall be treated as deaths without medical attendance, as provided for in Section 8 of this Act.

SEC. 7. That the certificate of death shall contain the following items, which are hereby declared necessary for the public health, welfare and convenience, and for legal, social, and sanitary purposes, which are hereby declared to be subserved by registration records:⁵

(1) Place of death, including state, county, township, village or city. If in a city, the ward, street, and house number; if in a hospital or other institution, the name of the same to be given instead of the street and house number. If in an industrial camp, the name of the camp to be given.

(2) Full name of decedent. If an unnamed child, the surname preceded by "Unnamed."

(3) Sex.

(4) Color or race—as white, black, mulatto (or other negro descent), Indian, Chinese, Japanese, or other.

(5) Conjugal condition—as single, married, widowed or divorced.

(6) Date of birth, including the year, month and day.

⁴A special proviso may be required for sparsely settled portions of a state.

⁵The following items are those of the United States standard certificate of death, approved by the Bureau of the Census.

(7) Age, in years, months and days. If less than one day, the hours or minutes.

(8) Occupation. The occupation to be reported of any person, male or female, who had any remunerative employment, with the statement of (a) trade, profession or particular kind of work; (b) general nature of industry, business or establishment in which employed (or employer).

(9) Birthplace; at least state or foreign country, if known.

(10) Name of father, provided that if the child or person is illegitimate, the name or residence of or other identifying details relating to the father or reputed father shall not be entered without his consent^{5a}; [provided further, that whenever a judgment has been entered determining the paternity of an illegitimate child, the clerk of the court where entered shall report the facts to the State Registrar who shall record the name of the father and sufficient data to identify the judgment, in connection with the record of the death of the child appearing in his office. A report by the clerk of any court subsequently vacating such judgment shall be made and recorded in like manner.]

(11) Birthplace of father; at least state or foreign country, if known.

(12) Maiden name of mother, provided that if the child or person is illegitimate, the name or residence or other identifying details relating to the mother shall not be entered without her consent; [provided further, that whenever a judgment has been entered determining the paternity of an illegitimate child, the clerk of the court where entered shall report the facts to the State Registrar who shall record the name of the mother, and sufficient data to identify the judgment, in connection with the record of the death of the child, appearing in his office. A report by the clerk of any court subsequently vacating such judgment shall be made and recorded in like manner.]

(13) Birthplace of mother; at least state or foreign country, if known.

(14) Signature and address of informant.

(15) Official signature of registrar, with the date when certificate was filed, and registered number.

(16) Date of death, year, month and day.

(17) Certification as to medical attendance on decedent, fact and time of death, time last seen alive, and the cause of death, with contributory (secondary) cause of complication, if any, and duration of each, and whether attributed to dangerous or insanitary conditions of employment; signature and address of physician or official making the medical certificate.

(18) Length of residence (for inmates of hospitals and other institutions; transients or recent residents) at place of death and in the state, together with the place where disease was contracted, if not at place of death, and former or usual residence.

(19) Place of burial or removal; date of burial.

(20) Signature and address of undertaker or person acting as such.

The personal and statistical particulars (Items 1 to 13) shall be authenti-

^{5a}Upon the recommendation of its Child Welfare Commission, Minnesota enacted a provision that whenever a judgment has been entered determining the paternity of an illegitimate child the State registrar shall record the name of the father, and sufficient information to identify the judgment both in connection with birth record, and death record if there be one, and making it the duty of the clerk of the court to notify him, and of any vacation, thereof. Sec. 4660 A, Chap. 220-Laws of Minnesota, 1917.

cated by the signature of the informant, who may be any competent person acquainted with the facts.

The statement of facts relating to the disposition of the body shall be signed by the undertaker or person acting as such.

The medical certificate shall be made and signed by the physician, if any, last in attendance on the deceased, who shall specify the time in attendance, the time he last saw the deceased alive and the hour of the day at which death occurred. And he shall further state the cause of death, so as to show the course of disease or sequence of causes resulting in the death, giving first the name of the disease causing death (primary cause); and the contributory (secondary) cause, if any, and the duration of each. Indefinite and unsatisfactory terms, denoting only symptoms of disease or conditions resulting from disease, will not be held sufficient for the issuance of a burial or removal permit; and any certificate containing only such terms, as defined by the State Registrar, shall be returned to the physician or person making the medical certificate for correction and more definite statement. Causes of death which may be the result of either disease or violence shall be carefully defined; and if from violence the means of injury shall be stated, and whether (probably) accidental, suicidal, or homicidal.⁶ And for deaths in hospitals, institutions, or of non-residents, the physicians shall supply the information required under this head (Item 18), if he is able to so, and may state where, in his opinion, the disease was contracted.

Sec. 8. That in case of any death occurring without medical attendance, it shall be the duty of the undertaker to notify the local registrar of such death, and when so notified the registrar shall, prior to the issuance of the permit, inform the local health officer and refer the case to him for immediate investigation and certification; provided, that when the local health officer is not a physician, or when there is no such official, and in such cases only, the registrar is authorized to make the certificate and return from the statement of relatives or other persons having adequate knowledge of the facts; provided, further, that if the registrar has reason to believe that the death may have been due to unlawful act or neglect, he shall then refer the case to the coroner or other proper officer for his investigation and certification. And the coroner or other proper officer whose duty it is to hold an inquest on the body of any deceased person, and to make the certificate of death required for a burial permit, shall state in his certificate the name of the disease causing death, or if from external causes (1) the means of death; and (2) whether (probably) accidental, suicidal, or homicidal; and shall, in any case, furnish such information as may be required by the State Registrar in order properly to classify the death.

Sec. 9. That the undertaker, or person acting as undertaker, shall file the certificate of death with the local registrar of the district in which the death occurred and obtain a burial or removal permit prior to any disposition of the body. He shall obtain the required personal and statistical particulars from the person best qualified to supply them, over the signature and address of his informant. He shall then present the certificate to the attending physician, if any, or to the health officer or coroner, as directed by the local registrar, for

⁶In some states the question whether a death was accidental, suicidal, or homicidal, must be determined by the coroner or medical examiner, and the registration law must be framed to harmonize.

the medical certificate of the cause of death and other particulars necessary to complete the record, as specified in Sections 7 and 8. And he shall then state the facts required relative to the date and place of burial or removal, over his signature and with his address, and present the completed certificate to the local registrar in order to obtain a permit for burial, removal or other disposition of the body. The undertaker shall deliver the burial permit to the person in charge of the place of burial, before interring or otherwise disposing of the body; or shall attach the removal permit to the box containing the corpse, when shipped by any transportation company; said permit to accompany the corpse to its destination, where, if within this state, it shall be delivered to the person in charge of the place of burial.

[Every person, firm, or corporation selling a casket, shall keep a record showing the name of the purchaser, purchaser's postoffice address, name of deceased, date of death, and place of death of deceased, which record shall be open to inspection of the State Registrar at all times. On the first day of each month the person, firm, or corporation, selling caskets shall report to the State Registrar each sale for the preceding month, on a blank provided for that purpose; provided, however, that no person, firm or corporation selling caskets to dealers or undertakers only shall be required to keep such record, nor shall such report be required from undertakers when they have direct charge of the disposition of a dead body.

Every person, firm, or corporation selling a casket at retail, and not having charge of the disposition of the body, shall inclose within the casket a notice furnished by the State Registrar calling attention to the requirements of the law, a blank certificate of death, and the rules and regulations of the State Board of Health concerning the burial or other disposition of a dead body.]⁷

SEC. 10. That if the interment, or other disposition of the body, is to be made within the state, the wording of the burial or removal permit may be limited to a statement by the registrar, and over his signature, that a satisfactory certificate of death having been filed with him, as required by law, permission is granted to inter, remove, or dispose otherwise of the body, stating the name, age, sex, cause of death, and other necessary details upon the form prescribed by the State Registrar.

SEC. 11. That no person in charge of any premises on which interments or other disposition of bodies are made shall inter or permit the interment or other disposition of any body unless it is accompanied by a burial, removal or transit permit, as herein provided. And such person shall indorse upon the permit the date of interment, or other disposition, over his signature, and shall return all permits so indorsed to the local registrar of his district within ten days from the date of interment, or other disposition, or within the time fixed by the local board of health. He shall keep a record of all bodies interred or otherwise disposed of on the premises under his charge, in each case stating the name of each deceased person, place of death, date of burial or disposal, and name and address of the undertaker; which record shall at all times be open to official inspection; provided, that the undertaker or person acting as such, when burying a body in a cemetery or burial ground having no person in charge,

⁷The provisions in brackets may be useful in states in which many funerals are conducted without regular undertakers.

shall sign the burial or removal permit, giving the date of burial, and shall write across the face of the permit the words "No person in charge," and file the burial or removal permit within ten days with the registrar of the district in which the cemetery is located.

SEC. 12. That the birth of each and every child born in this state shall be registered as hereinafter provided.

SEC. 13. That within ten days after the date of each birth, there shall be filed with the local registrar of the district in which the birth occurred a certificate of such birth, which certificate shall be upon the form adopted by the State Board of Health with a view to procuring a full and accurate report with respect to each item of information enumerated in Section 14 of this act.⁸

In each case where a physician, midwife, or person acting as midwife, was in attendance upon the birth, it shall be the duty of such physician, midwife, or person acting as midwife, to file in accordance herewith the certificate herein contemplated.

In each case where there was no physician, midwife, or person acting as midwife, in attendance upon the birth, it shall be the duty of the father or mother of the child, the householder or owner of the premises where the birth occurred, or the manager or superintendent of the public or private institution where the birth occurred, each in the order named, within ten days after the date of such birth, to report to the local registrar the fact of such birth. In such case and in case the physician, midwife, or person acting as midwife, in attendance upon the birth does not possess and cannot obtain, without independent inquiry, any item or items of information contemplated in Section 14 of this act, it shall then be the duty of the local registrar to secure from any person having the required knowledge, such information as will enable him to prepare the certificate of birth herein contemplated, and it shall be the duty of the person reporting the birth or who may be interrogated in relation thereto to answer correctly and to the best of his knowledge all questions put to him by the local registrar which may be calculated to elicit any information needed to make a complete record of the birth as contemplated by said Section 14, and it shall be the duty of the informant as to any statement made in accordance herewith to verify such statement by his signature, when requested so to do by the local registrar.

SEC. 14. That the certificate of birth shall contain the following items which are hereby declared necessary for the public health, welfare and convenience, and for legal, social, and sanitary purposes which are hereby declared to be subserved by registration records.⁹

(1) Place of birth, including state, county, township or town, village or city. If in a city, the ward, street, and house number; if in a hospital or other institution, the name of the same to be given, instead of the street and house number.

(2) Full name of child. If the child dies without a name, before the certificate is filed, enter the words "Died unnamed." If the living child has not yet been named at the date of filing certificate of birth, the space for "full

⁸A proviso may be added that shall require the registration, or notification at a shorter interval than ten days, of births that occur in cities.

⁹The following items are substantially in accord with those of the United States standard certificate of birth, approved by the bureau of the census.

name of child" is to be left blank, to be filled out subsequently by a supplemental report, as hereinafter provided.

(3) Sex of child.

(4) Whether a twin, triplet, or other plural birth. A separate certificate shall be required for each child in case of plural births.

(5) For plural births, number of each child in order of birth.

(6) Whether legitimate or illegitimate.

(7) Date of births, including the year, month and day.

(8) Full name of father; provided, that if the child is illegitimate, the name or residence of, or other identifying details relating to, the putative father shall not be entered without his consent; [provided further, that whenever a judgment has been entered determining the paternity of an illegitimate child, the clerk of the court where entered shall report the facts to the state Registrar who shall record the name of the father, and sufficient data to identify the judgment, in connection with the record of the birth of the child appearing in his office. A report by the clerk of any court subsequently vacating such judgment shall be made and recorded in like manner.]^{2a}

(9) Residence of father.

(10) Color or race of father.

(11) Age of father at last birthday, in years.

(12) Birthplace of father; at least state or foreign country, if known.

(13) Occupation of father. The occupation to be reported if engaged in any remunerative employment, with the statement of (a) trade, profession, or particular kind of work; (b) general nature of industry, business or establishment in which employed (or employer).

(14) Maiden name of mother, provided, that if the child is illegitimate the name or residence of, or other identifying details relating to, the mother shall not be entered without her consent; [provided further, that whenever a judgment has been entered determining the paternity of an illegitimate child, the clerk of the court where entered shall report the facts to the State Registrar who shall record the name of the mother, and sufficient data to identify the judgment, in connection with the record of the birth of the child appearing in his office. A report by the clerk of any court subsequently vacating such judgment shall be made and entered in like manner.]

(15) Residence of mother.

(16) Color or race of mother.

(17) Age of mother at last birthday, in years.

(18) Birthplace of mother; at least state or foreign country, if known.

(19) Occupation of mother. The occupation to be reported if engaged in any remunerative employment, with the statement of (a) trade, profession, or particular kind of work; (b) general nature of industry, business or establishment in which employed (or employer).

(20) Number of children born to this mother, including present birth.

(21) Number of children of this mother living.

(22) The certificate of attending physician or midwife as to attendance at birth, including statement of year, month, day (as given in Item 7), and hour of birth, and whether the child was born alive or stillborn. This certification shall be signed by the attending physician or midwife with date of signa-

^{2a}See provision of Minnesota law as to registration of judgment of paternity. Sec. 4660 A. Chap. 220-Laws of Minnesota 1917, also note *supra* 5a.

ture and address; if there is no physician or midwife in attendance, then by the father or mother of the child, householder, owner of the premises, or manager or superintendent of public or private institution where the birth occurred, or other competent persons, whose duty it shall be to notify the local registrar of such birth, as required by Section 13 of this act.

(23) Exact date of filing in office of local registrar, attested by his official signature, and registered number of birth, as hereinafter provided.

SEC. 15. That when any certificate of birth of a living child is presented without the statement of the given name, then local registrar shall make out and deliver to the parents of the child a special blank for the supplemental report of the given name of the child, which shall be filled out as directed, and returned to the local registrar as soon as the child shall have been named.

SEC. 16. That every physician, midwife, and undertaker shall, without delay, register his or her name, address and occupation with the local registrar of the district in which he or she resides, or may hereafter establish a residence; and shall thereupon be supplied by the local registrar with a copy of this Act, together with such rules and regulations as may be prepared by the State Registrar relative to its enforcement.

Within thirty days after the close of each calendar year, each local registrar shall make a return to the State Registrar of all physicians, midwives, or undertakers who have been registered in his district during the whole or any part of the preceding calendar year; provided, that no fee or other compensation shall be charged by local registrars to physicians, midwives or undertakers for registering their names under this section or making returns thereof to the State Registrar.¹⁰

SEC. 17. That all superintendents or managers, or other persons in charge of hospitals, almshouses, lying-in or other institutions, public or private, to which persons resort for treatment of diseases, confinement, or are committed by process of law, shall make a record of all the personal and statistical particulars relative to the inmates in their institution at the date of approval of this Act, which are required in the forms of the certificates provided by this Act, as directed by the State Registrar; and thereafter such record shall be, by them, made for all future inmates at the time of their admittance. And in case of persons admitted or committed for treatment of disease, the physician in charge shall specify for entry in the record, the nature of the disease, and where, in his opinion, it was contracted. The personal particulars and information required by this section shall be obtained from the individual himself if it is practicable to do so; and when they cannot be so obtained, they shall be obtained in as complete a manner as possible from relatives, friends, or other persons acquainted with the facts.

SEC. 18. That the State Registrar shall prepare, print, and supply to all registrars all blanks and forms used in registering, recording and preserving the returns, or in otherwise carrying out the purposes of this Act; and shall prepare and issue such detailed instructions as may be required to procure the uniform observance of its provisions and the maintenance of a perfect system of registration; and no other blanks shall be used than those supplied by the State Registrar. He shall carefully examine the certificates received monthly from the local registrars, and if any such are incomplete or unsatis-

¹⁰This section may be omitted if deemed expedient and the duty of supplying instructions may be assumed by the state officer.

factory he shall require such further information to be supplied as may be necessary to make the record complete and satisfactory. And all physicians, midwives, informants, or undertakers, and all other persons having knowledge of the facts, are hereby required to supply, upon a form provided by the State Registrar or upon the original certificate, such information as to the items mentioned in sections numbered seven and fourteen of this Act, as they may possess regarding any birth or death, upon demand of the State Registrar, in person, by mail, or through the local registrar; provided, that no certificate of birth or death, after its acceptance for registration by the local registrar, and no other record made in pursuance of this Act, shall be altered or changed in any respect otherwise than by amendments properly dated, signed, and witnessed. The State Registrar shall further arrange, bind, and permanently preserve the certificates in a systematic manner, and shall prepare and maintain a comprehensive and continuous card index of all births and deaths registered; said index to be arranged alphabetically in the case of deaths, by the names of decedents, and in the case of births, by the names of the children, where stated, as well as of the fathers and mothers, subject, however, to the provisions of Sections seven and fourteen of this Act. He shall inform all registrars what diseases are to be considered infectious, contagious, or communicable and dangerous to the public health, as decided by the State Board of Health, in order that when deaths occur from such diseases proper precautions may be taken to prevent their spread.

At the expiration of five years after the approval of this Act, certificates from the State Registrar containing the information herein below stated, shall be accepted by public school authorities in this state as *prima facie* evidence of age of children registering for school attendance and no other proof shall be required. At the expiration of fourteen years from the passage of this Act, such certificates from the State Registrar shall be required by all factory inspectors, and employers of youthful labor, as *prima facie* proof of age and no other proof shall be required from children born in this state or states which for fourteen years previous to the date of such certificate have had registration laws essentially identical with this Act; provided, that when it is not possible to secure such certificate for any child, the school authorities, factory inspectors and employers of youthful labor may accept as secondary proof of age any competent evidence by which the age of persons is usually established.¹¹

The certificate required by the preceding paragraph shall contain statements, taken from the birth registration certificates hereinabove required to be filed, showing the name, sex, color or race of each child, name of mother,^{11a} subject, however, to the provisions of Sections fourteen and nineteen hereof, and the city, town, village and county, as well as the date, of the birth.

If any cemetery company or association, or any church or historical society or association, or any other company, society or association, or any individual, is in possession of any record of births or deaths which may be of

¹¹A provision that no fee shall be required for school and labor certificates may be inserted, if thought best.

^{11a}It will be noted that only the name of the mother is to be given. This is to avoid the presumption which would arise in the case of an illegitimate child—if the father's name were omitted, but given in the case of legitimate children.

value in establishing the genealogy of any resident of this state, such company, society, association or individual, may file such record or a duly authenticated transcript thereof with the State Registrar, and it shall be the duty of the State Registrar to preserve such record or transcript and to make a record and index thereof in such form as to facilitate the finding of any information contained therein.

SEC. 19. Except when ordered by a court of competent jurisdiction in a case where such information is necessary for the determination of personal or property rights, and then only for such purpose, no member of the State Board of Health, nor any state nor local registrar, nor any person connected with the office of either, shall disclose the fact that any record in this act provided for, shows that any child was either legitimate or illegitimate.

The () court shall have jurisdiction, upon petition against and notice to the State Registrar, under such rules and regulations as the court may prescribe, to issue such writs or orders permitting or requiring the inspection of such records and the making and delivery of certified copies thereof as to it may seem just and proper.

SEC. 20. That each local registrar shall supply blank forms of certificates to such persons as require them. Each local registrar shall carefully examine each certificate of birth or death when presented for record in order to ascertain whether or not it has been made in accordance with the provisions of this Act and the instructions of the State Registrar; and if any certificate of death is incomplete or unsatisfactory, it shall be his duty to call attention to the defects in the return, and to withhold the burial or removal permit until such defects are corrected, if practicable. All certificates, either of birth or of death, shall be written legibly, in durable black ink, and no certificate shall be held to be complete and correct that does not supply all of the items of information called for therein, or satisfactorily account for their omission. If the certificate of death is properly executed and complete, he shall then issue a burial or removal permit to the undertaker; provided, that in case the death occurred from some disease which is held by the State Board of Health to be infectious, contagious, or communicable and dangerous to the public health, no permit for the removal or other disposition of the body shall be issued by the registrar, except under such conditions as may be prescribed by the State Board of Health. If a certificate of birth is incomplete, the local registrar shall immediately proceed to secure the missing items of information, as provided in Section 13 of this Act, if they can be obtained. He shall number consecutively the certificates of birth and death, in two separate series, beginning with number 1 for the first birth and the first death in each calendar year, and sign his name as registrar in attest of the date of filing in his office. He shall also make a complete and accurate copy of each birth and each death certificate registered by him in a record book supplied by the State Registrar, to be preserved permanently in his office as the local record, in such manner as directed by the State Registrar. And he shall, on the tenth day of each month, transmit to the State Registrar all original certificates registered by him for the preceding month. And if no births or no deaths occurred in any month, he shall, on the tenth day of the following month, report that fact to the State Registrar, on a card provided for such purpose.

SEC. 21. Immediately upon the receipt by the State Registrar of each birth certificate he shall from such certificate make a transcript containing

the items of information specified under Section 18 hereof, as those to be furnished to school authorities, factory inspectors and employers of youthful labor; and only from such transcript shall the certificates aforesaid be compiled.

SEC. 22. That each local registrar shall be paid the sum of twenty-five cents for each birth certificate and each death certificate properly and completely made out and registered with him, and correctly recorded and promptly returned by him to the State Registrar, as required by this Act.¹² And in case no births or no deaths were registered during any month, the local registrar shall be entitled to be paid the sum of twenty-five cents for each report to that effect, but only if such report be made promptly as required by this Act. All amounts payable to a local registrar under the provisions of this section shall be paid by the treasurer of the county in which the registration district is located, upon certification by the State Registrar. And the State Registrar shall annually certify to the treasurers of the several counties the number of births and deaths, properly registered, with the names of the local registrars and the amounts due each at the rates fixed herein.¹³

SEC. 23. That the State Registrar shall, upon request, supply to any applicant a certified copy of the [transcript of the] record of any birth [as set forth in the provisions of sections 18 and 21 hereof] or death registered under provisions of this Act, for the making and certification of which he shall be entitled to a fee of fifty cents, to be paid by the applicant, provided, that the fact that any child was either legitimate or illegitimate or other facts from which such fact could be determined, shall not be disclosed except when ordered by a court of competent jurisdiction in accordance with Section nineteen hereof; and provided, that the United States Bureau of the Census may obtain, without expense to the state, transcripts or certified copies of births and deaths without payment of the fees herein prescribed. And any such copy of the record of a birth or death, when properly certified by the State Registrar, shall be prima facie evidence in all courts and places of the facts therein stated. For any search of the files and records when no certified copy is made, the State Registrar shall be entitled to a fee of fifty cents for each hour or fractional part of an hour of time of search, said fee to be paid by the applicant. And the State Registrar shall keep a true and correct account of all fees by him received under these provisions, and turn the same over to the State Treasurer.

SEC. 24. That any person, who for himself or as an officer, agent, or employe of any other person, or of any corporation or partnership (a) shall inter, cremate, or otherwise finally dispose of the dead body of a human being, or permit the same to be done, or shall remove said body from the primary registration district in which the death occurred or the body was found, without the authority of a burial or removal permit issued by the local registrar of the district in which the death occurred or in which the body was found; or (b) shall refuse or fail to furnish correctly, as required by this act, any informa-

¹²A proviso may be inserted at this point relative to fees of city registrars who are already compensated by salary for their services. See laws of Missouri, Ohio and Pennsylvania.

¹³Provision may be made in this section for the payment of sub-registrars and also if desired, for the payment of physicians and midwives. See Kentucky law.

tion in his possession, or shall furnish false information affecting any certificate or record, required by this Act, or *who shall disclose any information in violation of this Act*; or (c) shall willfully alter, otherwise than is provided by Section 18 of this Act, or shall falsify any certificate of birth or death, or any record established by this Act; or (d) being required by this Act to fill out a certificate of birth or death and file the same with the local registrar, or deliver it, upon request, to any person charged with the duty of filing the same, shall fail, neglect, or refuse to perform such duty in the manner required by this Act; or (e) being a local registrar, deputy registrar, or subregistrar, shall fail, neglect, or refuse to perform his duty as required by this Act and by the instructions and direction of the State Registrar thereunder, shall be deemed guilty of a misdemeanor and upon conviction thereof shall for the first offense be fined not less than five dollars (\$5.00) nor more than fifty dollars (\$50.00), and for each subsequent offense not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100.00), or be imprisoned in the county jail not more than sixty days, or be both fined and imprisoned in the discretion of the court.¹⁴

SEC. 25. That each local registrar is hereby charged with the strict and thorough enforcement of the provisions of this Act in his registration district, under the supervision and direction of the State Registrar. And he shall make an immediate report to the State Registrar of any violation of this law coming to his knowledge, by observation or upon complaint of any person, or otherwise.

The State Registrar is hereby charged with the thorough and efficient execution of the provisions of this Act in every part of the state, and is hereby granted supervisory power over local registrars, deputy local registrars, and subregistrars, to the end that all of its requirements shall be uniformly complied with. The State Registrar, either personally or by an accredited representative, shall have authority to investigate cases of irregularity or violation of law, and all registrars shall aid him, upon request, in such investigations. When he shall deem it necessary, he shall report cases of violation of any of the provisions of this Act to the prosecuting attorney of the county, with a statement of the facts and circumstances; and when any such case is reported to him by the State Registrar, the prosecuting attorney shall forthwith initiate and promptly follow up the necessary court proceedings against the person or corporation responsible for the alleged violation of law. And upon request of the State Registrar, the Attorney-General shall assist in the enforcement of the provisions of this Act.

SEC. 26. All laws and parts of laws in conflict or inconsistent herewith be, and the same are hereby repealed.

SEC. 27. This Act may be cited as the *Uniform Vital Statistics Act*, and shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the several states.

SEC. 28. This act shall take effect from and after the——day of——.
(The clauses enclosed in brackets are new.)

Report of Womans' Court, City and County of San Francisco.—During the month of August, 1917, His Honor, T. I. Fitzpatrick, Judge, Police Court,

¹⁴Provision may be made whereby compliance with this act shall constitute a condition of granting licenses to physicians, midwives and embalmers

Dept. No. 1, held all the sessions during the month and 450 cases were disposed of.

MONTH OF AUGUST, 1917.

Charge.	Number of cases	Charge.	Number of cases
Vagrancy	205	Cruelty to children	2
Drunk, public place	38	Battery	4
Keeping house of ill-fame.....	9	Petit larceny	1
Inmate of house of ill-fame....	102	Burglary	1
Soliciting prostitution	45	Violation Ordinance No. 1857	1
Begging	1	Violation Section No. 270 P. C..	1
Violation Section No. 315.....	4	Embezzlement	1
Grand larceny	7	Violation State Poison Law.....	1
Robbery	1	Cruelty to Animals	1
Assault with deadly weapon.....	2	Receiving Stolen Property.....	1
Malicious mischief	2	Non-payment of Wages.....	2
Disturbing peace	14	Violation Ordinance No. 1364.....	1
Violation Section No. 316, P. C...	2		
Extortion	1	Total	450

FINAL DISPOSITION.

Sentenced	37
Held to answer	2
Fined	6
Placed in custody of probation officer.....	12
Sent to city hospital.....	3
Dismissed	390
	<hr/> 450

WM. H. NICHOLL,
Chief, Adult Probation Dept.

PAROLE

Report of the Work of the Central Howard Association for April, May and June, 1917.—To the Board of Directors: That all welfare work will suffer on account of the war is to be expected. That this result should be prevented as far as possible goes without saying. In reality each social problem is more acute, and is complicated by additional burdens and responsibilities. This is particularly true of the problem of crime with which we have to deal. The Central Howard Association, therefore, instead of doing less work should enlarge its efforts to meet the following situation:

1. The increase in crime which has resulted from every war and which is already manifest during the past three years.

2. The problem of proper care for alien enemies who are incarcerated and who, for the most part, are kept in idleness, and the possible care of a much larger number of war prisoners, which is sure to result as the war continues.

3. The securing of fair and just treatment to ex-prisoners who from good motives may try to serve their country by enlisting, but who are barred by military law.

4. Active attention to preventive legislation which is likely to secure scant attention from all except those who are directly interested.

During the past three months the superintendent has been active in formulating policies as to these problems, and in securing preventive legislation. Among the bills encouraged by us, that were passed by the Fiftieth General Assembly were the following:

1. A bill providing for a state penal farm for petty offenders.
2. Passage of a measure to do away with capital punishment in Illinois, the bill, however, being unfortunately vetoed by the governor.
3. A measure to correct abuses of the third degree by police and prosecutors.
4. A bill providing for the parole of certain prisoners outside of the state.
5. A general revision of the parole law, making that law more satisfactory and more inclusive.

These measures, together with a more constructive policy in the administration of the state correctional institutions under the new Department of Public Welfare, will give opportunity for a better classification of offenders and the discovery of causes of crime.

In the meantime our work for paroled and discharged prisoners has been quiet, but effective. The total number of new applications for the months of April, May and June to date has been 124. The number of interviews involved in giving these men a new start in life was 737. The number of men under parole at present to the superintendent is 84, and these men, almost without exception, are actively at work and doing well.

During the past quarter we have received a new indication of the gratitude of our applicants. As an experiment, and on account of our special needs, we addressed a letter to about one hundred men either under parole or recently discharged from parole, asking them to make a voluntary contribution to the work of the association. Their response has thus far been quite gratifying. Seven of the number have contributed \$5.00 each, one man stating that he would give \$5.00 each month and another sending in \$1.00 each week of the period of his parole. The total amount given in sums of \$5.00 down has been \$79.50.

The receipts by subscription for the months of April and May were \$1,454.53. The receipts have barely kept pace with our current expenses and we shall hope for an increased response to meet the larger responsibilities facing us.

As I have previously stated, a much larger proportion of our income should come from Chicago. In order to secure this result, however, the superintendent will need the active co-operation of the Board of Directors and some volunteer service on the part of all friends of the association.

I would recommend an organized special campaign for this purpose at the earliest time practicable. This plan is followed by every other organization with good results.

Hoping to have your combined wisdom and support in meeting our obligations and opportunities, this report is

Respectfully submitted,

F. EMORY LYON, *Superintendent.*

POLICE

Ryan Dactyloplane.—One of the factors which has led to the rapid introduction of finger prints for purposes of criminal identification has been the ease with which such prints may be taken. Henry, in his book on the subject, states that all that is required for this purpose are white paper, printer's ink and a roller for spreading it. Although it is possible to take finger prints with such a crude piece of apparatus, just as it is possible to build a log cabin with the use of no tools other than a hand saw and a broad axe, better work can in every case be done if better tools are provided. The Ryan Dactyloplane, which has been invented by Patrick Ryan, finger print expert of the New York Municipal Civil Service Commission, is a highly perfected piece of apparatus which enables a finger print expert properly to ink the fingers of the prisoner and from the fingers so inked to take impressions for permanent record. The great value of this invention in finger-print work is shown by the fact that with its use Mr. Ryan was, on January 25, 1917, able to take the finger prints of eight hundred and fifty-four candidates for patrolman in sixty-four minutes, an average of about four seconds for each candidate.

LEONARD FELIX FULD, *New York.*

Report on Baltimore Police.—Report No. 7 of the Baltimore Bureau of State and Municipal Research is a pamphlet of thirty-one pages which contains a summary of improvements in business methods recommended by the Bureau to the Baltimore Police Department. Improvements in central purchasing and stockhouse methods have already been adopted by the police department and the Bureau's recommendations with reference to an improved modern unit cost accounting system are now being carefully considered.

LEONARD FELIX FULD, *New York.*

Annual Report of New York District Attorney.—The report of the chief clerk of the district attorney's office in New York County for 1916 is a pamphlet of fifty pages, of which forty are devoted to ten-year tables of criminal statistics. The pamphlet contains no statistical indices, graphs or analyses. The professional reader will find in this report the data which he needs in his work; the general reader will find little of interest.

LEONARD FELIX FULD, *New York.*

Finger Prints.—The twenty-two-page pamphlet on "Finger Prints," which has been prepared by City Magistrate Joseph M. Denel of New York, summarizes the present-day knowledge of the scientific, sociological, and legal aspects of this modern and to the efficient administration of the criminal law in a most convenient form for the professional reader and in a most interesting form for the general reader.

LEONARD FELIX FULD, *New York.*

PROBATION.

First Annual Report of the Juvenile and Domestic Relations Court of Richmond, Va.—In 1914 the General Assembly of Virginia passed an act providing for the establishment of Juvenile and Domestic Relations Courts in cities of 50,000 or over. In the fall of 1915, the City Council of Richmond, passed an ordinance establishing such a court. The jurisdiction of the court as set forth in the act is as follows:

"The special justices elected or appointed under this act shall be conservators of the peace within the corporate limits of the cities for which they are respectively appointed and within one mile beyond the corporate limits of such cities; and shall have, within the corporate limits, exclusive original jurisdiction, and, within the territory one mile beyond said corporate limits, concurrent jurisdiction with the justices and the circuit courts of the counties, of all the offences following, that is to say:

(1) All offenses committed by children under the age of eighteen years against the laws of this commonwealth or against ordinances of the respective cities for which each justice shall be elected.

(2) All prosecutions against men charged with ill-treatment, abuse, abandonment, or neglect of their wives and all prosecutions against parents, guardians or custodians, charged with ill-treatment, abuse, abandonment or neglect of their children or wards.

(3) All cases involving the prosecution and punishment of persons over the age of eighteen years who are charged with offenses against children under that age, or with causing, aiding in or contributing to the delinquency or dependency of such children; and

(4) All cases affecting the protection, care, custody or control of children under the age of eighteen years, of which justices of the peace or police justices now have or shall be given jurisdiction, and said special justices shall, in all such cases, possess the jurisdiction and exercise all the powers conferred upon justices of the peace and police justices by the laws of the state. Such justices shall have such other powers and jurisdiction as may be conferred upon them by the councils of their respective cities, not in conflict with the Constitution and Laws of the United States and of the State of Virginia."

The report emphasizes the value of placing in the same court the cases involving prosecutions of persons charged with offenses against children, persons charged with ill-treatment, desertion or neglect of wives or children, and the cases of delinquent and dependent children. Attention is also called to the value of combining the adult and juvenile probation work insofar as they are dealing with the above types of cases.

It is interesting to note that the ordinance creating the court provides that hearings shall be private, in the following words:

"From the hearing or trial of a juvenile offender or cases coming within the provision of Section 7 of an act approved March 10, 1914, there shall be excluded all persons not officers of the court, attorneys or witnesses in the case, or relatives of the child, or others involved in the case; provided, however, that visitors may be admitted in certain cases with the permission of the justice of the court."

The following statement in regard to the effect of prohibition is worthy of note:

"It will be observed that the largest class of adult cases before the court was that of men charged with abusing or beating their wives. This class, we are glad to say, has been greatly reduced since prohibition went into effect. For instance, the number before the court on this charge, in June, was 16 white and 18 colored; in December, 5 white and 4 colored—eloquent testimony to the brutalizing effect of alcohol. We hope that as time goes on this class of cases will be entirely eliminated.

"The next largest class of cases under this division is that of non-support.

This has also been somewhat reduced since prohibition went into effect, and we believe, will eventually be cut in half. In non-support cases, however, there are other causes to be reckoned with, such as jealousy, infatuation by the man for another woman, etc."

When a child is placed on probation it is given the following card:

"Be it remembered, that on the.....day of....., 191...,
.....is placed on probation under the charge of.....
....., Probation Officer, on the following conditions:

1. Keep out of bad company.
2. Attend divine services each Sunday.
3. Attend school regularly or keep steadily employed.
4. Report to Probation Officer on.....of each week at
.....o'clock.....M.
5. Keep well in mind that you are a ward of the court.
6. Be at home every night by.....P. M.

If you break any rule of your probation, you will be brought before the court and punished.

....., Judge." I

Something of the method of the officers of the court is shown by these paragraphs:

"In addition to the requirements set forth on the card, the boy may be required to pay a weekly installment on account of a small fine or as restitution for damage done in the commission of his offense. Sometimes special provisions are made to suit the particular case, as for instance, the boy who has been charged with speeding will be prohibited from driving his father's car for the ensuing six or twelve months. Besides the card outlined above, the probationer is required to bring a weekly report from his home signed by his parent or guardian and if he is attending school, a school report, signed by his teacher. These reports have been found to be the most effective check in holding a probationer up to strict compliance with the terms of his probation.

"If a boy is out of school, or out of work, as many of them are when placed on probation, the probation officer makes it his business to see that the child is reinstated in school, or that he secures a job, as the case may be. The probationer is required to report once a week to the probation officer and as often as possible the probation officer makes a personal visit to the homes of his probationers. During the past year, however, there have been so many children on probation that it has been impossible for the probation officers to make friendly visits to the homes of their wards as frequently as they should.

"It is generally agreed by juvenile court officials, the country over, that a probation officer should not be required to handle more than 75 or 80 children at one time; and even them, usually, the probation officer is not called upon to make investigations."

(The writer feels that no probation officer should be required to visit more than 50 families. That is the generally accepted standard, but there are very few courts that can live up to it. In the Richmond report it is not clear whether the 75 boys are in 75 families or in a smaller number.)

J. D. HUNTER, *Chicago.*

Juvenile Court of the Parish of New Orleans.—The 1916 report of this court shows the court has jurisdiction of the Compulsory Education Laws, of every misdemeanor against a child by an adult, except assault and battery, and of every offense by a child except capital cases. In the charges against children is included being "neglected." It is very pleasing to note the emphasis which is laid on compulsory education. In the report the statement is made that "one good result of the Compulsory School Movement, generally throughout the school system, is the enrollment of nearly 40,000 children in the schools, the highest attained so far in this direction."

J. D. HUNTER.

Annual Report of the Juvenile Court and Juvenile Detention Home, Cook County, Illinois.—The report in hand covers the work of the year 1916. It is embraced in 111 pages and includes the reports of the Chief Probation Officer of Cook County, the Director of Psychopathic Institute, the Superintendent of the Juvenile Detention Home and the attending physician at the Home.

The report of the Chief Probation Officer shows that in the course of successive years, beginning with 1912, there has been a continuous decrease in number of children sent to institutions. For instance, in 1912, 1913, 1914, 1915 and 1916, the number of children sent to institutions have been as follows respectively: 1422, 1200, 1154, 1044 and 975. During the year covered by the report, reputable citizens of the county had made complaint of 4,977 cases. Of these are the 975 committed to institutions; 707 were placed on probation in their own homes. These facts emphasize the point that the probation officers of this Juvenile Court are not, as some enemies of the system profess to believe, going about eagerly attempting to break up homes and take children away to institutions. Furthermore, since February 1, 1916, probation officers have been charged with the duty of visiting the homes from which children have been taken with a view to the improvement of the home and with a view to getting the parents into such a position that they can receive their children again from the institution to which they have been sent. During the year under review, 1,103 dependent children have been released from institutions and associations as against 975 who were committed.

A study of about 100 families whose mothers were receiving pensions under the Mothers' Pension Law was made. Eight children in these families were either truant or delinquent. All but one of these were delinquent or truant before the pension was granted. One of the features of this department that contributes very considerably to its success is the so-called "red tape" through which the expenditures of the pension money in the homes is supervised. This goes a long way toward assuring that the children growing up under the advantage of the pension system may become good citizens. Without this supervision, the Mothers' Pension approximates indiscriminate relief.

From pages 32 to 52 inclusive is an article by Miss Florence Nesbit, entitled, "Estimating of Family Budget." Miss Nesbit assists the pensioned mothers by making for them a budget by which they are guided in the expenditure of their pension money for family needs.

The report of the Juvenile Psychopathic Institute included in this entire report is by Dr. William Healy, late Director of the Institute. He has taken for study, the records of 325 of the earliest delinquent cases studied beginning

with April, 1914. He has undertaken to follow up the subsequent history of these 325 since the time of their examination in the Institute. In about 40% of the cases, the recommendations made by the Director of the Institute were followed by the Juvenile Court; in 40% they were not followed. In the remaining cases either specific recommendations had not been made (8%), or in 12% of cases the Institute had not been able to find out whether recommendations were carried out or not.

Of the 325 cases, the outcome is fairly well known in 65%. This group, says Dr. Healy, may be divided into 40% failures and 25% successes. This is not to be interpreted, however, as covering the successes and failures of all the Juvenile Court work, or even in selected cases; this for the reason that the 325 are most difficult cases, well established as repeaters or problem cases.

In the group in which recommendations of the Institute were followed, success was obtained in 36% and failure in 19%. In the remainder, the outcome is either pending or unknown. Where recommendations were not followed, successes were met in only 19% of cases and failure in 62%. In the remainder, the outcome is pending or unknown.

In 86% of the 325 cases, unfavorable environment was declared to be an important contributing cause of the delinquency. Of those who are allowed to remain in the old environment, 62% are failures and 32% successes. Among those removed to a better environment 27% were failures and 62% successes. In regard to those sent to institutions for some period of time, after which they were allowed to return to the former unfavorable conditions, 55% are failures and 22% are successes. It is interesting to note that one-third of the successful ones of this group who returned to their former environmental conditions are said to have returned to good homes. Temporary placement in better homes with early return to former bad conditions, resulted in 77% of failures and 12% of successes.

The report of the Juvenile Detention Home shows a considerable increase in the number of children detained as compared with past years. In 1907, for instance, the total number was 2,695; in 1916, the total number was 4,653. This rapid increase has tried the Detention Home to the utmost.

R. H. G.

Report of the Juvenile Court of St. Louis, Mo., 1914-1915.—Although this report for the years 1914-1915 did not appear until 1917, it has considerable value. The chapter headings are as follows:

- I. The Court System.
- II. Classes of Children and Manner in Which They Are Brought Before the Court.
- III. Statistical Review.
- IV. Conditions Underlying Juvenile Delinquency.
- V. Tables.
- VI. Laws and Regulations.

The statistical review was made under the direction of Dr. George B. Mangold, Director of the Missouri School of Social Economy. Some of the figures given are worthy of note.

	Charges in 1915.
Delinquent cases	1,409
(a) Boys	1,272
(b) Girls	137
(c) White	1,091
(d) Colored	318
(e) Offenses against—	
Person	44
Property	725
Morals	220
Peace	130
Violating city ordinances	140
Probation	117
Parole	76
Not report or changes of custody	33

Another table shows that out of these 1,409 delinquent cases, 1,178 were reported by the police, 152 by probation officers, 10 by parents, 19 by attendance officers and 50 by other people and agencies.

The first paragraph of the report shows that 17 judges have sat in the Juvenile Court of St. Louis in 13 years. It is unusual for such frequent changes to be made in large cities and it is unfortunate. In spite of it, the St. Louis court has the reputation of being one of the most efficient in the country and the report being considered shows an excellent system of organization.

In one instance, however, the report does call attention to a change in procedure, due to the change in judges. This change was in regard to the hearing of cases of delinquent girls. In one period of the court such cases were heard in chambers, the judge permitting a girl who was disinclined to talk to tell her story to a woman probation officer, who would repeat it to the judge in the girl's presence. In another period two of the women probation officers were appointed as referees. They examined all girls and heard witnesses and presented recommendations to the court. In cases of disagreement under this system the court heard all parties. This practice has been abolished now and the judge again hears such cases in chambers.

It is an excellent thing that in every case an investigation of the home, family conditions, environment, habits, associates, school and employment record is made.

Because the relationship between the police is somewhat different in St. Louis than in any other city, the following paragraph is quoted:

"If arrested for violating the law, children are taken to the station on foot or by street car by the officer making the arrest. A preliminary hearing is there held by the captain or lieutenant in charge and should facts warrant, the children are 'booked' and a report made out. A copy of this report, to be made the basis of the investigation, is forwarded to the probation officer. In spite of the large number of reports by the police, many cases are settled at the police station by conference between complainants, the parents and the police. Police file all charges of violating city ordinances. Should the facts in the report warrant a court hearing, the chief probation officer files a petition with the clerk of the court, charging delinquency, and all those concerned are summoned to appear. Children under arrest may be released on recog-

nizance by the captain of the district, where it appears that parents are sufficiently reliable to be depended upon to produce the child in court on demand. Children whose parents cannot be reached are forwarded to the House of Detention. Here the sheriff, through the superintendent, may release a child to relatives on bond, which is merely a written promise to produce the child when wanted. The fees and property qualifications of bondsmen are nearly always waived."

The statistics are better interpreted for the reader than in most Juvenile Court reports. The following percentages are interesting (the percentages given refer to 1915):

90% of the delinquents were boys and 10% were girls.

23% of the delinquents were colored. This percentage shows an increase from year to year because "agencies for social betterment among colored people are few."

64% of the delinquent girls were charged with offenses against morals and 16% of the boys.

40% of the delinquents were foreign born or colored. (A percentage much larger than the proportion of these elements in the community.)

60% of the delinquents were between 14 and 16.

JOEL D. HUNTER, Chicago.

Semi-Annual Report of Adult Department in San Francisco from January 1, 1917, to June 30, 1917:

Total number on active probation at end of June 30, 1917.....	759
Wages earned by probationers—6 months.....	\$191,425.00
Money collected from probationers, care of families and reimbursing merchants	17,645.75
Number of positions and employments secured for probationers.....	451
Number of applications for probation filed in Superior Courts: Dept. No. 6, 56; Dept. No. 11, 69; Dept. No. 12, 36.....	161
Number of probations granted in Superior Courts: Dept. No. 6, 38; Dept. No. 11, 57; Dept. No. 12, 35.....	130
Number of cases transferred to this county.....	5
Number of applications for probation denied, Superior Courts: Dept. No. 6, 18; Dept. No. 11, 22; Dept. No. 12, 11.....	51
Number of applications denied probation and sent to State Prison, 45; County Jail, 6; School of Industry, 0.....	51
Number of personal visits to homes of probationers.....	2,308
Number of probationers sent to State Hospital—drug and drink....	38
Number of probationers released, Superior Courts: Dept. No. 6, 10; Dept. No. 11, 19; Dept. No. 12, 3.....	32
Number of probationers who have violated probation and sentenced: Dept. No. 6, 3; Dept. No. 11, 6; Dept. No. 12, 2.....	11
Number of persons placed in custody of probation officer—Police Courts: Dept. No. 1, 102; Dept. No. 2, 57; Dept. No. 3, 83; Dept. No. 4, 98.....	340
Number of persons released—Police Courts.....	327
Number of probationers reporting by mail.....	3,228
Number of probationers reporting in person.....	6,380

Number of letters received.....	3,873
Number of letters sent out.....	3,704
Number of interviews in person.....	2,839

WM. H. NICHOLL,

Asst. Probation Officer in Charge of Adult Dept.

Report of Adult Probation Department of San Francisco, for the Month of August, 1917.—

Total number on active probation at end of August 31, 1917.....	720
Wages earned by probationers, month of August, 1917.....	\$32,400.00
Money collected from probationers, care of families and reimbursing merchants	3,283.92
Number of positions and employments secured for probationers.....	75
Number of applications for probation filed in Superior Courts, Dept. No. 6 (11), Dept. No. 11 (7), Dept. No. 12 (2).	20
Number of probations granted in Superior Courts, Dept. No. 6 (6), Dept. No. 11 (6), Dept. No. 12 (16)	28
Number of applications for probation denied, Superior Courts, Dept. No. 6 (2), Dept. No. 11 (1), Dept. 12 (0).	3
Number of applications denied probation, Superior Courts, and sentenced, State Prison (3), County Jail (0), School of Industry (0)	3
Number of personal visits to homes of probationers.....	416
Number of persons sent to state hospital, drug and drink.....	1
Number of probationers released from probation, Superior Courts, Dept. No. 6 (4), Dept. No. 11 (5), Dept. No. 12 (26)	35
Number of probationers who have violated probation and sentenced, Superior Courts, Dept. No. 6 (0), Dept. No. 11 (0), Dept. No. 12 (0) ..	0
Number of persons placed in custody probation officer, Police Courts, Dept. No. 1 (27), Dept. No. 2 (2), Dept. No. 3 (24), Dept. No. 4 (12)	65
Number of persons released, Police Courts.....	75
Number of probationers reporting by mail.....	597
Number of probationers reporting in person.....	1,003

WM. H. NICHOLL,

Chief, Adult Probation Dept.

N. Y. Municipal Civil Service Examination for Promotion to Chief Probation Officer, Court of Special Sessions (February 15, 1917).—

1. Prepare recommendations to the Chief Justice of the Court of Special Sessions on each of the following problems, giving your reasons in support of your recommendations:
 - (a) The assignment of cases to probation officers in accordance with the district of the city in which the probationer resides.
 - (b) The assignment of male probationers to female probation officers and the assignment of female probationers to male probation officers.
 - (c) The employment of a multigraph machine in the probation department of the Court of Special Sessions.

- (d) The assignment of one probation officer to read to the court the sworn reports of other probation officers, instead of having each probation officer read his own report.
2. Outline clearly what co-operation you would establish as Chief Probation Officer of the Court of Special Sessions with each of the following authorities:
- (a) United States Bureau of Immigration.
 - (b) New York State Hospital Commission.
 - (c) New York State Probation Commission.
 - (d) Board of Inebriety.
3. Prepare for the use of your probation officers an outline of at least five specific instructions for their guidance in the investigation of EACH of the following classes of offenders awaiting sentence:
- (a) Drug addicts.
 - (b) Alleged kleptomaniacs.
 - (c) Moral degenerates.
 - (d) Those guilty of cruelty to animals.
4. Discuss the attention which should in your opinion be given to each of the following factors in connection with the supervision of persons on probation:
- (a) Employment.
 - (b) Religion.
 - (c) Morals.
 - (d) Conjugal conditions.
5. Charges have been made to the court against probation officer A, who, it is alleged, does not perform his duties and writes fictitious reports, and probation officer B, who, it is alleged, receives bribes of money from certain of his probationers. These charges are referred to you for investigation. State how you would proceed, giving full particulars.
6. Prepare a report to the Chief Justice of the Court of Special Sessions outlining the improvements which you would recommend, as Chief Probation Officer, for increasing the effectiveness of the work in the Probationers' Court of the Court of Special Sessions. Give your reasons for each recommendation and an analysis of the shortcomings of the present procedure in each case.

Sign this Report "John Doe, Chief Probation Officer." If you Sign Anything Else You Will Be Disqualified.

7. Discuss briefly each of the following problems in connection with the work of probation officers, giving your recommendations and your reasons for your recommendations in each case:
- (a) Obtaining for your probation officers all of the privileges enjoyed by lawyers in their intercourse with prisoners in the city prisons.
 - (b) The use of a system of merit marks for probationers.

New York City Civil Service Examination for Promotion to Deputy Chief Probation Officer (July 17, 1917).—

PART I.

1. Prepare for use in an annual report of the Children's Court the framework of a statistical table that will show in the aggregate and proportionally the number of children arraigned in the court, either for the first time or with previous court records, on the charge of juvenile delinquency and in the various special proceedings.

Note: Do not put down any figures as only a framework is asked for.

2. Give the proper general reference to and the pertinent provisions of the law which in your opinion may be invoked:
 - (a) To punish the parent of a child who is an habitual truant from school with the parent's approval.
 - (b) To permit the dismissal, without a hearing, by a justice of the Children's Court of a case against a girl, 15 years of age, charged with having wilfully poisoned an infant, thereby endangering the life of the infant.
 - (c) To permit a justice of the Children's Court to commit to a proper institution a child adjudged formally to be a mental defective, but whose parents object to the idea of commitment.
 - (d) To bring back from Jersey City to New York City a girl recently placed on probation in the Children's Court here, but who since has absconded.
3. and 4. On pages 1 and 2 of the Investigation Report form probation officers are required to make brief entries under the following headings, among others:
 - (a) Total income of family (specify items).
 - (b) Number of persons in household (specify lodgers).
 - (c) Sanitary conditions.
 - (d) Appearance of home and environment.
 - (e) Apparent general health.
 - (f) Other children involved.

Page three of this Investigation Report is for such "supplementary facts and explanations" as the probation officer may see fit to make.

As Deputy Chief Probation Officer (female) charged with reviewing the Investigation Reports before submission to the court, what elaboration or amplification of any of these six brief entries would you expect to find on page three of the Investigation Report in each of the following cases? Give your reasons fully:

- (1) Improper guardianship case involving two girls, 8 and 10 years of age, respectively, who have been shamefully neglected by their drunkard parents.
 - (2) Girl, 15 years of age, who has admitted having had immoral relations with men in the neighborhood of her home.
5. State whether the following considerations might influence you in assigning female probation officers to cases and explain how:
 - (a) Age of probation officer.
 - (b) Education of probation officer.

- (c) Previous employment of probation officer.
 - (d) State of probation officer (married or single).
 - (e) Service rating of probation officer (efficiency record rating).
6. (a) In what respects may the quality of the work performed by one female probation officer surpass the quality of the work performed by another?
- (b) How would you proceed to determine what should constitute a reasonable quantity of work to be performed by a female probation officer?
7. (a) Describe a program of recreation suited to a school girl probationer, 14 years of age (disorderly child), living in a tenement district.
- (b) Describe a program of recreation suited to a working girl probationer, 15½ years of age, employed in a department store.
- (c) A girl, 15 years of age, is brought to court by her father (a widower) and is adjudged to be a disorderly child. She asks permission from the court to make her home with an aunt in another neighborhood. What should determine the fitness of the latter home for this girl?
8. (a) What opportunities does the City of New York offer girls in the way of preparation for trades?
- (b) What is the purpose of prevocational work in the public elementary schools?
- (c) State two advantages of the plan of continuation class instruction for girls over evening school work.

LEONARD FELIX FULD, *N. Y. City.*

MISCELLANEOUS.

National Chamber of Commerce Committee's Plan for Relief of Persons Dependent Upon Soldiers and Sailors.—Affecting practically every employer in the United States is the recommendation that the government enact legislation providing for reasonable separation allowances to be paid to the dependents of the enlisted personnel of the army and navy, basing such compensation on the number of dependents in each family. Such action is advocated in a report made to Secretary Baker, as chairman of the Council of National Defense, by a special committee of the Chamber of Commerce of the United States. Mr. Baker recently asked the National Chamber to investigate and report on the matter of voluntary civilian assistance in the care of dependent families of men enlisting in the military and naval forces.

The National Chamber Committee, of which F. A. Seiberling, of Akron, O., president of the Goodyear Tire and Rubber Company, is chairman, further recommends that the government officially designate some national organization to raise a general fund by voluntary public subscription and distribute the fund so raised for the alleviation of conditions not adequately met by national or state allowances. This organization would operate in conjunction with representative local bodies.

The committee is of the further opinion that pending action of the federal government in the matter and the publication of details of the ultimate plan, employers throughout the country should make only temporary commitments to the dependents of their employes who enlist, in accordance with the suggestion of the Secretary of War recently made to the National Chamber.

"In view, however, of the business uncertainty which the temporary nature

of these commitments creates," the report goes on, "and in view of the large and confusing number of individual and separate community efforts to raise funds for the anticipated needs of dependent families, all indicating the need for co-ordinated effort, this committee very respectfully urges prompt action by the government and the speedy publication of the details of the general plan.

"Large employers throughout the country already have taken the initiative, as they did during the period when troops were required for the guardianship of the Mexican border, and have made provision for the care of the dependents of their enlisted employees. It is realized, however, that this cannot continue upon any general scale, particularly in view of the uncertain period of duration of the war, without imposing hardship and embarrassment upon the smaller employers who are in the majority throughout the country. Obviously, business firms and corporations everywhere would be the largest contributors to any national patriotic fund raised for the purpose named."

Secretary Goodwin, of the National Chamber, said the plans in operation in Great Britain and Canada differ in detail though the experiences of each country seem to have been similar. In Great Britain there is a separation allowance for the dependent family. The wife receives from the government an allowance of so much a week, to which is added an allotment of so much a week out of the husband's military pay. The government makes an additional allowance for the first child, so much for the second, and so much for every other child in the family. These allowances do not do away with the necessity for relief efforts on the part of the public organizations such as the Soldiers' and Sailors' Relief Society, and other organizations whose voluntary workers and local committees take care of cases seeming to demand special assistance.

In Canada there are three sources of revenue for dependents: First, a portion of his pay, the percentage determined by individual conditions, is deducted and sent home to those dependent on the soldier or sailor. Second, the government makes a separation allowance intended to enable dependents to approximate the pre-enlistment maintenance standard. This allowance represents a flat sum, regardless of the size of the family. Third, there is a National Patriotic Fund, raised by voluntary public subscription and distributed by a corporate organization authorized by the Dominion government. This fund takes care of necessitous cases where local investigation seems to establish the need for it.

It was said in the committee report that enlisted men in the armies above referred to neither need nor desire remuneration in addition to the service pay, which, in accordance with rank, they receive as a provision of statute, for the following reasons:

They have little or no opportunity of spending money for necessities at the front.

It is undemocratic to have men serving in the ranks alongside one another with different rates of pay for their patriotism, as must happen if enlisted men receive individual allowances from their respective employers; and such differentiation has been found to be a contributing factor towards desertions from the ranks.

It has been found that men fraternize together in the trenches under circumstances which lead to exchanges of confidence as the result of a few days' intimate acquaintance not possible under normal conditions. They receive letters from home; knowledge of differences in the standard of family maintenance, emphasized by assistance from several sources breeds discontent, and discontent leads to desertions.

The fundamental aim of the present readjustments of methods on the part of the foreign governments referred to, the report concludes, seems to be: (a) To establish equality in the basis of service in the ranks; (b) to equalize the burden upon industry and people; and (c) to avoid duplication of patriotic organizations and funds, and to combine all the machinery of family maintenance with an eye to the psychological effect upon the soldier at the front.

Imprisonment Before Trial Is a Big Handicap.—Professional bondsmen are gradually going out of existence, it's true; but cannot some method be advanced to maintain a bonding or surety bureau, to insure the appearance of all offenders in court, yet give them the opportunity to defend themselves?

Oftimes a man who is not guilty is brought before the "bar of justice," yet is not afforded the opportunity to establish his innocence. A man accused of a crime has a distinct advantage, if he is able to procure bond. The fact that he is often compelled to remain in jail awaiting trial, proves a detrimental factor in securing for him the "square deal" to which he is entitled under the law.

The preparation of any criminal case requires time, careful work, both for the defendant and the prosecution. While the district attorney's office has been busily investigating the circumstances that enter into the case, interviewing witnesses for the prosecution, and building up evidence on which to convict the defendant, he has been compelled to languish in jail and frequently unable even to interview his own counsel, except, perhaps, through jail bars and under the most unfavorable conditions.

Can the public, therefore, wonder why most unfortunates charged with crime, who happen to be in destitute circumstances, without friends to sign their bonds, are usually convicted?

It appears that a public office of professional bondsman could be satisfactorily employed to remedy this evil which enters into thousands of cases and at present gives the district attorney the upper hand. Regulated under judicial supervision, open to all worthy defendants, stripped of exorbitant premiums, the professional bondsman could supply the needed element in properly dispensing true justice.

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Mercy and Justice.—"That our courts should temper mercy with justice is a proposition from which no good man and true will dissent. No longer do we try the defendant in Star Chamber sessions, or hang him on mere rumor and suspicion. Rather than subject one innocent man to unmerited punishment, we will suffer twelve undoubted criminals to go unwhipped of justice. But have we stopped at twelve? So far have we pushed this benign theory that is now seems opportune to review the path over which we have traveled, and to ascertain whither it leads. May it not be well to ask that our courts now temper their mercy with a little justice?

"There is reason to fear that what we have thought to be mercy is not that virile virtue, but its weak counterfeit, sentimentality. Today there is scarcely a promising development in court procedure which has not fallen under its blight. The Children's Court, an admirable institution in theory, has, perhaps, saved itself in spite of its friends. Still if editors are to be credited, here and there the court's ill-advised clemency makes it a powerful, if unwitting, con-

tributor to the spread of youthful delinquency. 'I want to make this court,' a successful judge once remarked, 'a place that a boy simply hates to come to a second time.' The probation system for minor and adult delinquents, if wisely applied and vigorously administered, will certainly save many a first or second offender. But it will certainly fail if a weak court allows a defiant culprit to regard probation as an indulgence of open guilt and a plenary absolution from merited punishment. 'The disease that afflicts us,' writes Judge Marcus Kavanagh of Chicago, 'is want of respect for the law,' and this lack the judge traces, in part, to the inability or unwillingness of officials to enforce the law and to the practice of 'coddling the criminal.'

"During the last five years, there has arisen in this country, and especially in this State (New York) a disposition to coddle criminals. You cannot do that without belittling crime in the eyes of the criminal. I warn you that three-quarters of the crimes in this country today are committed by paroled criminals who were paroled before they were cured.'

"Perhaps we can secure mercy and justice in their proper proportions, only by remembering that the community has rights, quite as undoubted as the rights of any criminal."—*America*.

These remarks are in the main true, but I wish to add to the weight of them some timely qualifications. The "manufactured defense and phony alibi" resorted to by criminals are only a means of self-defense against the police "frame-up"; courts are not infallible; if errors creep in they are the direct result of the dishonesty of human nature and deceit. Hospitals and physicians do not pretend to cure all of their patients; in fact we see many relapses into ill-health after discharges from hospitals. Jails and prisons, which are legal hospitals, do not pretend to make every rascal a saint. The critic of courts and the administration of justice should bear this timely truth in mind, namely; human conduct, like other branches of human inquiry, will be found to have its ultimate facts, the detection of whose causative principles is beyond our reach.

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REVIEWS AND CRITICISMS

CRIMINAL SOCIOLOGY. By *Enrico Ferri*. Translated from the 1905 French edition by *Joseph I. Kelly* and *John Lisle*. Edited by *William W. Smithers*. With introductions by *Charles A. Ellwood* and *Quincy A. Myers*. Little, Brown & Company, Boston, 1917. Pp. XLV, 577, \$5.00.

The translators of this remarkable book have rendered an enviable service to English-speaking lawyers and scholars. For it is more than an ordinary book; it is in fact an encyclopedia of positivist thought, a high water mark of the contributions of the Positive School of Criminology. In no mean sense the work is an autobiography and a history of forty years of thinking along a definite line. Merely to run through the elaborate footnotes and bibliography not only gives the measure of the patience and the alertness of Professor Ferri's mind, but also reveals the amazing richness of the field of criminalistic science as it has developed in the last half century. It is particularly gratifying to have access to a better edition of the work than Morrison's abridgement and translation offered.

The argument of the book is so elaborate and detailed that it is almost impossible to give an adequate idea of its contents. This follows from the author's concept of criminal sociology as wider than law or statistics or anthropology. Ferri, being an "organicist," is naturally inclined to emphasize the biological and anthropological aspects of societal life: criminal sociology, he says, is inseparable from criminal biology. Yet he vigorously denies any bias, and still holds to the synthetic theory which he developed as early as 1881. This theory, in his own words, considers that "crime in general is the resultant of combined biological and social factors, and that the reciprocal influence of biological and social factors is different for each of the crimes, not only in their different forms of homicide, robbery, and rape, but also for the varieties of each criminal species (homicide committed from passion, or for the purpose of robbery, or from insanity, or for revenge). Thus social factors predominate in crimes against property; biological factors in crimes against the person; although both classes of factors concur always in the natural determination of every crime" (p. 74).

This statement of the case renders it impossible to exalt any one set of causes over any other. Hence Ferri criticizes a whole series of what appear to him one-sided theories, including orthodox socialist belief that economic considerations are basic to both normal and abnormal conduct. Likewise he presses the futility of attempting to get at "first causes." His attachment to Darwin, Spencer and Lombroso on the one hand brings him back constantly to reiteration of the claims of psycho-biology in a proper understanding of either causes or treatment of criminality. But on the other hand his discipleship to Marx makes him look to economic reconstruction for the way out. Thus he says, "The remedy can only be found in an amelioration of

the conditions of human existence through a more satisfactory economic organization of society" (181). "In the new human civilization which will succeed the bourgeoisie civilization, as the latter succeeded feudalism, the conditions of existence will be assured to every man in return for moderate labor. And thus morality will be strengthened and elevated. * * * Toil, socially regulated and rewarded, will be an effective preservative against crime and vice. They will cease to be epidemic and will be restricted to isolated cases of acute pathology. * * *" (182). "Thus by adopting the collective ownership of the means of production and labor, and by thus assuring really human conditions of life to every human being who shall have done his duty (children and the sick excepted) in furnishing his daily toil in some form or other, will be accomplished the drying up, as Fauchet says, of 'three great springs of crime: extreme riches, extreme poverty, and idleness.'"

A second basic thought is his famous "law of criminal saturation." Every phase of civilization has its peculiar criminality and every social group has its appropriate quota of criminality. "As a given volume of water at a definite temperature will dissolve a fixed quantity of chemical substance and not an atom more or less; so in a given social environment with definite individual and physical conditions, a fixed number of delicts, no more and no less, can be committed. * * * In the same way that misdeeds are natural phenomena resulting from different factors, so also there is a law of criminal saturation, in virtue of which the physical and social environment, combined with hereditary and acquired tendencies and occasional impulsions, determines in a necessary way the quota of misdeeds" (pp. 209, 285, 178 ff, etc.). This is perilously near being a truism, and springs perhaps from Spencer's dictum that every people has just as good a government as it deserves.

A third point is his really illuminating distinction between anti-human or atavic and anti-social or evolutive criminality; for this distinction reconciles the notion of the atavic criminal as a degenerate with that of the evolutive criminal as a forerunner of future morality, and reduces the apparent paradox in Emerson's hard saying to the effect that the highest virtue is always against the law. It also gives point to the claim that a high rate of crime is an index of social progress.

A fourth, which the author never wearies of pressing, since it is the key to his whole system, is the denial of free will and moral responsibility as a basis for either studying the problem of crime or treating the criminal. Freedom of the will he holds untenable in the light of statistics, psychology and the whole of modern physical science; and he rejects as mere equivocation every attempt to compromise the issue, for example, by positing "limited" or "relative" freedom. He also separates moral responsibility from penal or social accountability, and discards moral culpability as a prerequisite to determining criminality. One must recognize, as Ellwood points out, that the psychology Ferri utilizes for his thesis is somewhat antiquated; and the summary scrapping of the whole moral element is faulty sociology.

Much ambiguity and wordiness could be eliminated by substituting the term and the concept "responsiveness" for "responsibility." It would also serve to round out the objective notion of social accountability.

Finally, these points crystallize in a five-fold classification of criminals: the criminal insane, the born criminal, the habitual, the criminal by passion and the occasional. As Ferri's critics have repeatedly observed, this classification, while suggestive, is faulty, because based on no apparently sound principle of theory or practice. It may claim to be "synthetic," but is really a series of anthropological categories. At any rate it no longer offers anything to either the investigator or the administrator. The whole trend of modern psychology is also against it. The work of Binet, Janet, Jung, Freud and their American co-laborers has opened up whole new continents, the investigation of which is bound to crack the rigid categories of Lombroso and his school.

In line with these theoretical ideas Ferri elaborates his scheme of procedural reforms. First of all, procedure is to divest itself of all spirit of brutal vengeance and to "assume the character of a defense pure and simple, imposed by the necessities of social conservation" (320). This involves a criticism of the current "exaggerated confidence in punishment" as an effective social defense (236-40). The core of positivist procedural reform may be stated thus: "If the positive school reduces the practical importance of the penal code to a minimum, it throws a clearer light on the laws of procedure and criminal measures, for the very reason that their object is to take punishment out of the ethereal regions of legislative menace and place it in the practical sphere of the social clinic for protection against the disease of crime" (442). And its innovations depend upon three general principles, as follows: "(A) An equilibrium of right and protection must be established between the individual to be judged and the society which judges, in order to escape the exaggerations of individualism introduced by the classical school, which failed to distinguish between dangerous and not dangerous, atavistic and evolutive delinquents. (B) The duty of a criminal judge is not to determine the degree of moral responsibility of a delinquent, but his material guilt or physical responsibility, and this once proven, to fix the form of social preservation best suited to the defendant according to the anthropological category to which he belongs. (C) Continuity and solidarity between the different practical divisions of social defense from the judiciary police to sentence and execution" (443).

The chief concrete deductions from these principles may be cited. The common principle of "presumptive innocence" must be modified to square with facts. Juries should be allowed to render other verdicts than mere acquittal or condemnation. Appeals should be allowed from acquittals. Legal reparation should be made for unjust conviction. Juries, being amateur and unscientific, should be abolished. (His arguments would hold here if judicial procedure could be made absolutely and mathematically exact; but since even the best of judges, anthropologists and psychologists are human, fallible and subject to bias, the jury, weak as it is, must still serve to round out law with

public opinion.) The criminal bench should be specialized and separated from the civil. Judges should be elected for limited terms to keep them from becoming too highly professionalized. Law school curricula will need modifying to supply this specialized ability. Trials are to be conducted by science and not by mere legal wits. To every magistrate's office should be attached an expert or committee of experts in criminal anthropology. Anthropometry, the sphygmograph, hypnotism, etc., could contribute new types of evidence. Public defenders on the same plane as prosecutors would promote more substantial justice. Suspended sentence and probation upon condition of restitution to the aggrieved party he approves. And he accepts in general terms the indeterminate sentence; but fastens responsibility for its administration upon special courts rather than upon prison authorities. Naturally he condemns the short sentence.

In the matter of penalties he proposes two correlative schemes. First, a series of equivalents or substitutes for punishment—really preventive measures. Among these are free trade, freedom of migration, lowering import duties, progressive income tax, administrative federalism with political unity, public works in years of scarcity and hard winters, regulation of manufacture and sale of alcohol, substitution of metallic for paper money, institutions for popular and agricultural credit, proper salaries for public functionaries, limited hours of labor, elimination of unemployment, development of good roads, good city lighting, destruction of slums, building of decent lodging houses and workmen's homes, new types of education, athletics, public baths, free or almost free theaters, protection of neglected children—in short, raising the standard of life of the mass of the people. These indirect but constructive methods are admirably conceived even though we may not all agree as to the relative value of details. Second, what he calls a rational system of penalties borrowed and adapted from Garofalo's "Criminology." These range from the death penalty through deportation to imprisonment for indeterminate periods and fines or restitution. So far as I can see these are the traditional penalties. The "rational" part of the scheme consists apparently in its flexibility, the individualization of treatment, and the assessment of penalties according to anthropology instead of to criminal code. Undoubtedly this "system" is capable of just as procrustean administration by a blindly devout positivist as ever any member of the much-abused classical school could have accorded his penal code.

On the subject of prison administration Ferri has comparatively little to say, save that prisons must be hospitals where delinquency is treated, that they must not be places of ease but centers of industry in which inmates may work at remunerative occupations and earn the wherewithal to make reparation to those they have injured. Incidentally the use of electric shocks and cold douches is recommended for prison therapeutics. As a consequence of his theory of the insane criminal he advocates special institutions for this type. As a substitute for the old cellular type of prison, he urges penal farm colonies either at home or in colonial possessions. Moreover he suggests utilization of the incorrigibles in reclamation schemes for land which malaria

has rendered uninhabitable. Such schemes are phases of deportation for life, which in the "rational system" is prescribed treatment for habituals.

Capital punishment is to be retained for certain types of homicide, although it is recognized that "in its monosyllabic simplicity it is only an easy panacea, and under this head, it certainly does not solve a problem as complex as that of dangerous criminality" (530). But the chief objection to it, when judged by the logic of facts, is its ineffectiveness as a repressive measure; it is a mere judicial scare-crow. To make it an efficient means of "artificial selection" it would have to be applied more seriously and courageously. For Italy alone this would mean the execution of over 1,500 individuals annually—"an absolute moral impossibility" (532).

Whatever we may think of the result, Ferri is altogether consistent in his attempt to maintain the sociological point of view. Throughout the book this synthetic attitude dictates both the choice and the elaboration of his materials. And he closes the book in this same mood: "Henceforth, criminal science, while remaining a juridical science in its results must nevertheless in its basis and its means of research become a branch of sociology" (555). And finally this note of optimism: "Criminal sociology, as well as criminal science will finally lose its importance, for it will dig its own grave, because through the scientific and positive diagnosis of the causes of criminality, and hence through the indication of partial and general individual and social remedies to combat it in an effective manner, it will reduce the number of delinquents to an irreducible minimum, where they can enter into the future organization as a daily modification of civilized society and where the less penal justice there shall be, the more social justice will necessarily follow" (569).

This is undoubtedly a great book which has rendered yeoman service to the positivist cause and still serves as a chart for the orientation of thought away from mere legalism to social science. But like many other stimulating books it inevitably lends itself to challenge in numerous places. Many of its weaknesses flow from its adherence to Spencerian sociology and Marxian economics. For example, few sociologists accept the theory that society is literally a "natural living organism" (349); or again, the altogether too broad assertion that "equally buried in the past is the individualistic illusion that denies in the world of biology the infinite power of physical and psychical heredity, and creates in the field of sociology artificial obstructions between the individual and society" (406).

In spite of his attempt to be synthetic and to account for all possible factors in human life, he sticks too closely to old-fashioned materialism to be thoroughly convincing to a generation nourished on Bergson. Hence his defense of the physical or telluric factor in crime sounds strained and weak. The influence of Marxian dogma appears in his emphasis upon the economic factor in criminality: for example, in the charge that alcoholism is caused primarily by industrialism; in such statements as his conviction that "scientific socialism is the logical and inevitable conclusion of sociology, which otherwise must remain

sterile and impotent" (334), and that "sociology will be socialistic or it will not exist" (17). Fortunately for sociology, socialism has either gone beyond the scientific socialism of the nineteenth century or has not reached it yet!

The biological bias leads to such pitfalls as his dictum (p. 88) upon the predominant value of the face in the diagnosis of the criminal type, or his exaggerated emphasis upon craniology, or his dogmatic pronouncement of the hereditary tendency to tuberculosis and criminality. Again it obtrudes the moot issue of genius as "degenerescent abnormality" (104). And it enables him to voice the fallacy (which his own distinction between atavic and evolutive crime should have averted) that crimes may have some useful effect in society just as pain and even disease may have in the individual organism (104).

It is unfortunate that most of the statistical material is somewhat out of date, and particularly that it was gathered and manipulated before modern biometric methods had been worked out. Real statistical correlation might put a somewhat different face upon much of this data. In this connection it seems impossible to agree with the author that from the figures on page 219 it is clearly evident that there is a continual increase in the proportion of acquittals in France. The figures seem to show exactly the opposite.

On several occasions the reader is asked to accept the author's subjective impressions as scientific proof: One needs only to have seen a microcephalic idiot, as I did once in Turin, to give up every argument contrary to mine, etc., etc. (see p. 67). Occasionally, too, the author resorts to mere *obiter dicta* to get out of a tight place: for example, the quotation from Goethe, p. 123. Moreover, an almost puerile vanity is permitted to skyrocket across certain pages (e. g., p. 327), and leads the author to make unwarranted claims for a monopoly of truth by the positivists. This trait manifests itself further in an almost truculent attitude towards scientific opponents: they are all too frequently labeled with epithets. I get the impression that every man who is not a positivist out and out is either a spiritualist, a statistical logician, or a miserable Byzantine word chopper. Thus the attack on Saleilles (p. 372) seems wholly gratuitous. The extreme repetitiousness of the book reveals also an overweening faith in the reader's patience.

On the whole the make-up of this volume is quite in keeping with the high standard set by its predecessors in the Modern Criminal Science Series. The editorial prefaces and particularly Professor Ellwood's introduction enhance its value. One cannot help wishing that the index were equally extensive: it omits such important items, for example, as probation, reparation, penal farms, suspended sentence. A few slips occur: Comte is frequently spelled with a *p* (pp. 82, 85); Demolins is called Desmoulins (118); De Roberty appears as De Koberti (351); Kraepelin as Kroepelin (317); Schaeffle's *Bau und Leben des Socialen Körpers* is cited as *Bau und Struktur*, etc.; Mouton's book is dated as 1827 instead of 1887 (421). The author's statement about Coxey's army marching on Washington a hundred thousand strong (263) should have been corrected to the proper figures, which never reached one-tenth that number.

Barring these slight imperfections the editors and printers have acquitted themselves notably in handling the hundreds of foreign names and titles which bristle in the footnotes. Not the least substantial service performed by this Series is just that habituation of Americans to scrupulous care for such details.

After all is said and done, and however we may disagree with details of Professor Ferri's work, he still remains the outstanding figure in the field of criminal sociology. And long after this pioneer book itself has been scrapped it will remain as one of the foundation blocks in the protective wall which positive science seeks to build about a progressive human society.

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ARTHUR J. TODD.

THE DEVELOPMENT OF INTELLIGENCE IN CHILDREN. By *Binet and Simon*. Translated by *Elizabeth S. Kite*; with an introduction by *Henry H. Goddard*. Published by the Training School at Vineland, New Jersey, 1916, p. 336.

The Binet-Simon Scale has been used to such an extent and has been modified to such a degree in America that the average reader coming in contact with one of the modifications is likely to ask just what Binet and Simon did. Heretofore one would have had to go to the original French to answer such a question. Miss Kite has made the historical material accessible to the English reader.

We find this statement in the introduction; "This book as a whole constitutes a complete history and exposition of the Measuring Scale as Binet left it," and such it is. The book is divided into five chapters each of which represents an article that occurred in *L'Anne Psychologic* from 1905 to 1911. The first four were written by Binet and Simon, the fifth one by Binet.

Chapter I is historical. The lack of any uniform idea as to what inferior intelligence is, and the necessity for a scientific diagnosis of it is emphasized. The work of some seven men, mostly in the medical world, is briefly mentioned. Their methods of diagnosis are described.

The title of the second chapter is "New Methods for the Diagnosis of the Intellectual Level of Subnormals." Here we find a description of their first results obtained with the use of the so-called "1905 Tests." The paper is divided into three parts: First, The Psychological Method. The purpose of the tests is told and then thirty tests are presented, together with a description of the methods of procedure. Second, Pedagogical Method, which is simply evaluating knowledge gained in school. Third Medical Method, which includes Hereditary Influences, Anatomical and Physiological examinations.

In the third chapter we have a detailed description of the efforts of the authors to determine standards of intelligence. The methods and results of work are given as determined by experimenting with normal children of three, five, and seven to eleven years; also institution cases including idiots, imbeciles and morons; a third group made up from subnormal children of the primary schools. Thus we see the

thoroughness with which the authors attacked this most vital problem.

The remainder of the book consists of two papers dealing mainly with the later revisions of the scale. The first paper gives the 1908 revisions which arranges the tests for children ranging in age from three to thirteen; this also contains an emphasis on the necessity of making an estimate and an interpretation of the results. The necessity of great care and accuracy is urged; this is followed by illustration of the method of recording results. An excellent discussion of the use of the scale is placed at the end of this paper, the authors claiming that the greatest value of the scale will be found in testing subnormals rather than normals. The last chapter of the book deals with the 1911 revisions of Binet. Following the description of the revisions is a discussion of the methods of teachers' judgment of the intelligence of their pupils, and in contrast with this relatively poor and inaccurate method is given some results obtained by Intelligence Tests. The final part of this paper is Binet's answer to the objection to his tests, that differences exist in the intelligence of children belonging to different social conditions.

A critical review of this book is not the reviewer's purpose; we aim simply to report the contents of the translation. Ample critical summaries have been made of the original articles. The purpose of the publishers has been well accomplished—that of making more usable to American readers the original work of Binet and Simon.

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L. W. WEBB.

SOCIAL DIAGNOSIS, By *Mary E. Richmond*, New York, Russell Sage Foundation, 1917, pp. 511, \$2.00.

Up to now each person engaged in whatsoever type of social service in the sense in which the phrase, "social service," has come to be used, has been a law unto himself. There has been no attempt worthy of the name to bring together the experience of a great number of workers, to make an analysis of these experiences, and to pick out what is common to all; and finally no attempt has been made to bring together scientific productions in various fields and to focus them upon the special problems of the social worker. In these respects, Miss Richmond's work is a milestone. She has tried to point out in this volume, after an extensive study of case work from various sources, those things that are common to all workers. "The elements of social diagnosis, if formulated, should constitute a part of the ground which all social workers could occupy in common."

As a preliminary to bringing the data together, two case workers of experience were engaged, one experienced in family work and the other in medical work, to study original cases for one year. The reading of cases was done in five different cities. The aim was to bring to light through this reading the best social work practice that could be found, provided it was in actual use and not exceptional in character.

For the first time within the reviewer's knowledge, we have here applied to the problem of the social worker a discussion of the nature

and uses of social evidence, types of evidence, competence of witnesses, bias of witnesses and inferences—how they are made and corroborated, and the risks involved in them—the potency of predispositions, assumptions and habits of thought. In other words, the author is thinking out some of the fundamentals of our problem precisely as the lawyer and the detective must think out their problems. The competence of witnesses and the reliability of evidence depend in a very great degree upon certain psychological characteristics of the witnesses.

The fundamentally scientific attitude of the author toward her life work is reflected in this volume in her use of the word "diagnosis" in preference to "investigation." Diagnosis suggests the process of accumulating evidence, of making analyses and finally of gaining insight into the setting before the diagnostician. It is suggestive of the professional attitude also that she uses the term "client" in referring to the person or persons whose social condition is the object of diagnosis.

The technical aspects of the problem of obtaining data in social diagnosis are presented in several chapters entitled, "The First Interview," "The Family Group," "Outside Sources in General"—including a discussion of statistics of outside sources and principles governing the choice of sources which, by the way, is an extremely illuminating discussion—"Relatives as Sources," "Medical Sources," "Schools as Sources," "Employers and Other Work Sources," "Neighborhood Sources," "Miscellaneous Sources," "Social Agencies as Sources," "Letters, Telephone Messages," etc., "Comparison and Interpretation," "The Underlying Philosophy." All the foregoing are embodied in Part II entitled, "The Processes Leading to Diagnosis."

In Part III, the author presents variations in the processes in chapters entitled as follows: "Social Disabilities and the Questionnaire," "Plan of Presentation," "The Immigrant Families," "Desertion and Widowhood," "The Neglected Child," "The Unmarried Mother," "The Blind," "The Homeless Man," "The Inebriate," "The Insane," "The Feeble-minded," "Supervision and Review."

It seems to the reviewer that this volume is altogether indispensable to students and to teachers in college and university classes which are attempting to train young people for social service or even to give them an insight into the problems that confront the public welfare worker.

The workmanship on this volume is of the best order, characteristic of the publications of the Russell Sage Foundation, and the book is written in a style that should commend itself to the good taste of intelligent readers.

Northwestern University.

ROBERT H. GAULT.

MENTAL ASPECTS OF DELINQUENCY. By *Truman Lee Kelley*, University of Texas Bulletin No. 1713, March 1st, 1917, pp. 125.

This report is comprised in six chapters entitled as follows: I. The Problem; II. Tests and Measurements; III. Norms used; IV. Test Results; V. Case Studies; VI. Summary and Recommendations. The measurements used by Dr. Kelley in this investigation were:

A. Physical tests including height, weight, vital capacity, vital

index, circumference of head, breadth of head, length of head, cephalic index test, pubertal development, strength of vision, astigmatism, hearing and hasty examination of nose and throat.

B. Psychomotor tests including strength of grip, handedness and tapping.

C. Mental functions including school grade, Binet age, constructive ability and completion test.

Smedley's norms were used for height, weight, vital capacity and grip; Ernst's for left-handedness; MacDonald's for head measurements; Smedley's for hearing. The Binet ages were corrected according to Thorndike, Rogers and McIntyre. No above-12-year tests were employed. The institution in which Dr. Kelley made his investigations, the Gatesville Industrial School, is a good example of one in which a great variety of cases are mingled within the same walls. Equipment is wanting there for what is necessary to bring about a proper segregation of types.

Northwestern University.

ROBERT H. GAULT.

PUBLICATIONS RECEIVED

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The Evaluation of a Method for Finely Graded Estimates of Abilities. By *James B. Miner*, reprinted from the Journal of Applied Psychology. Volume I. Pages 123-133.

Annual Report of the Children's Court of the City of New York for the Year, 1916. Pages 252.

Journal of the American Institute of Criminal Law and Criminology

Official Organ of the American Institute of Criminal Law and Criminology; of the American Prison Association; and of the American Society of Military Law.

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CONTENTS

EDITORIALS.

Monograph No. 3—Annual Meeting of the American Prison Association—Separation of Civil and Military Offenders; Jurisdiction of Civil and Military Courts; the Question of Practice—Delinquency in War Time..... 642

CONTRIBUTED ARTICLES AND COMMITTEE REPORTS:

1. Reforms of the Criminal Law.....*John P. Briscoe* 653
2. Insanity as a Defense to Crime in Louisiana...*W. O. Hart* 658

CONTENTS—Continued

3. Crime and Immigration (Report of Committee "E" of the Institute).....*Kate Holliday Claghorn, Chairman* 675
4. Probation and Suspended Sentence (Report of Committee "B" of the Institute)....*Herbert C. Parsons, Chairman* 675
5. Family Disintegration and the Delinquent Boy in the United States*Ernest H. Shideler* 709
6. Legal Aid for Poor Prisoners in France....*Robert Ferrari* 733
7. The Housing of Prisoners.....*F. Emory Lyon* 739
8. Courts of Domestic Relations.....*Charles W. Hoffman* 745
9. Morphinism and Crime.....*L. L. Stanley* 749

CORRESPONDENCE:

Re Narcotic Drugs 757

JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE. 760

NOTES AND ABSTRACTS..... 766

A Social Study of Mental Defectives in New Castle County, Delaware (766)—Support of Destitute Families of Prisoners in Pennsylvania (771)—Support of Child Born Out of Wedlock in Pennsylvania (771)—Law Regulating the Use of Drugs in Pennsylvania (772)—Sale and Distribution of Narcotic Drugs in Massachusetts (777)—Grand Jury Resolution Relating to Narcotic Drugs (781)—Reaching the Adult Responsible for the Delinquent and Neglected Child (782)—Irish Prison Conditions (783)—Annual Report of the St. Louis Police Department (785)—Legal Training for Police Officers (785)—Annual Report of the New York Police Department (786)—The Law of Illegal Public Speaking (786)—Pennsylvania Commission on Penal Code (786).

REVIEWS AND CRITICISMS..... 787

Human Welfare Work in Chicago, By *Harvey C. Carbaugh*, Ed. (787)—Report of the Minnesota Child Welfare Commission, By *William W. Hodson et al.* (787)—The Norwegian Law Relating to Children Born Out of Wedlock, and Abstract of Report to the Storting, By Councillor of State *Castberg* (790)—Public Affairs Information Service, By *Lillian Henley* and *Katherine J. Middleton*, Eds. (792)—Annual Report of the Children's Court of New York City (793)—The Law of Human Life, By *Elijah J. Brookshire* (797).

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EDITORIALS

MONOGRAPH NO. 3

Advance copies of Monograph Number 3 in our series of Criminal Science Monographs have come from the press of Little, Brown & Co. It is entitled "The Unmarried Mother." The author is Mr. Percy G. Kammerer of Providence, and there is an introduction by Dr. William Healy of Boston.

ANNUAL MEETING OF THE AMERICAN PRISON CONGRESS

The Forty-seventh Annual Meeting of the American Prison Association, held in New Orleans, November 19th to 23rd, was a good reminder of the need of continuous welfare work, not only in spite of the war but because of the war.

It was a reminder, too, of the slow, but sure, progress of reform. For in the founding of this organization in 1870, the spirit of John Howard came to life just one hundred years, less three, after he began his notable work in the Bedford jail. That spirit took form in its declared principle of reformation *versus* retaliation. Its whole program for education and action was then set forth, briefly as follows:

1st. For the improvement of the laws which deal with offenses and offenders, and of the procedure of their enforcement.

2nd. To study the causes of crime and of the social surroundings of offenders, and the best methods of dealing with the latter, and of preventing the former.

3rd. The improvement of institutions wherein offenders are found.

4th. The after-care of prisoners, and especially such as give evidence of reformation.

Needless to say, forty-seven years have not been sufficient for the fulfillment of all these far-seeing principles. To those familiar with the history of the organization, and its dominant themes for discussion from year to year, it is apparent that the dreams of the charter members have been enacted into legislation, and have actuated the States in their administration of correctional institutions, with increasing rapidity.

The delegates to the American Prison Congress are composed

largely of officials of the various penal institutions of the United States, Canada, Cuba, and Mexico, together with those who are interested in the crime problem, prisoner's aid workers, etc. The Association is composed of seven subsidiary organizations, as follows: The Warden's Association; Chaplain's Association; Physician's Association; Woman's Association; American Association of Clinical Criminology; The Prisoner's Aid Association and the Association of Boards of Parole and Pardon.

At New Orleans, more than ever before, the program assigned section meetings to these specialized groups, while the evening sessions were of general interest to all. The traditional hospitality of the south was fully illustrated to the nearly four hundred delegates in attendance, and the local press gave large space to all the discussions.

As might be expected, the relation of the crime problem to the war, was given large place in all the discussions, with the exception of the opening address by the President, Dr. David C. Peyton.

The question of enlisting released prisoners in the fighting ranks was repeatedly raised. Many favored such action, if the necessary change in the laws could be made. Some thought that if ex-prisoners were accepted, they should be in separate regiments, and others, some of them officials, frankly stated they had encouraged prisoners to enlist regardless of the military rule against it. The Warden's Association passed a resolution urging the Government to modify the Army and Navy regulations which now forbid the enlistment of men who have ever been convicted of felony.

The Association, following the action of its special conference at Washington in July, passed a resolution urging the rescinding of an executive order of the Government, forbidding the purchase of any prison-made goods; i. e., for the period of the war. In view of the wide spread idleness in many prisons, general regret was expressed that any self-interest should stand in the way, in these days, of prisoners being fully occupied. All should be at work, if not in the Army, then at least in Government industries, the making of Red Cross supplies or the production of food.

Because of the general interest in this phase of the problem, but no less by reason of his commanding personality, a conspicuous figure in all the meetings of the Congress, was Colonel Sedgewick Rice, U. S. A., Commandant in charge of the U. S. Military Barracks at Ft. Leavenworth, Kansas. That institution or prison, containing 1500 inmates, came to be known as never before, not only by reason of unique features of its new buildings with open front cells, but

especially because of the spirit and restorative features of its administration.

Next to this current war-time interest in the utilization of society's waste human material, the still more fundamental and perpetual problem of the mental condition of offenders engaged the attention of many sessions.

This phase of the question, scarcely realized and therefore rarely mentioned a few years ago, was given large place on the program, and attracted invariable interest. Papers by Dr. R. B. von Klein Smid, Dr. Edith R. Spaulding and others, along this line, were quoted at length in the papers and caused lively discussions.

The medical and psychological aspects of the question of dealing with the defective portion of prison populations were stressed respectively in the meetings of the Prison Physician's Association and in those of the Association of Clinical Criminology. That it was not merely a question of speculation and scientific interest was evident, however, by the manner in which it permeated all discussions of practical administration.

The revelations of physical, mental and social causes of crime made more and more obvious the fact that wholesale treatment of offenders, as in the past, will no longer meet the situation satisfactorily. The need is apparent of greater discrimination in the courts, and individualization of treatment in the correctional institutions. To this end, also, emphasis was laid upon the vital importance of a higher type of carefully trained attendants in charge of prisoners, as well as more thorough supervision of all those under conditional release from courts and correctional institutions.

The question of self-government versus strict discipline by the management, was not so much "in the air" as one year ago, or in the public press of recent years. General conclusions in this direction seemed to be in a middle-of-the-road policy that recognized certain advantages in all systems. A splendid paper by Dr. O. F. Lewis on "The Oldness of the New in Prison Reform," set forth the survival of the best in past methods, and gave promise of better ones in the future, by the elimination of the unfit.

Consideration of the housing of prisoners, with two papers on prison building, brought to light the increasing interest in all plans for getting as many inmates as possible out under the open sky, without at the same time subjecting them to public exhibition, or resort to gun-guard or chain gang methods. In this connection was cited the worthy

example of Louisiana in tearing down its ancient bastile and using the bricks to build comfortable, small unit barracks.

The Lease System of employing prisoners, still in vogue in Alabama, was condemned unsparingly in a stirring address by Hon. Isadore Shapiro, of Birmingham. Following his appeal, the Association passed a resolution reaffirming its opposition to the Lease System, and also deploring the idleness and inadequate industries found in many prisons. One prominent delegate expressed his conviction that no State had a moral right to make money from the work of its prisoners, and still make no provision for aiding their dependents.

By invitation and vote, the next meeting of the American Prison Association, in October, 1918, will be at Oklahoma City, Oklahoma, the enterprising new city of 125,000, and a general desire was expressed by the delegates, to carry the gospel of prison reform to this somewhat unknown field of the middle west.

F. EMORY LYON.

SEPARATION OF MILITARY AND CIVIL OFFENDERS—
JURISDICTION OF CIVIL AND MILITARY COURTS
—THE QUESTION OF PRACTICE

Who is to try the various offenders when civilians conspire with military authorities? The question treated in the article found in *La Giustizia Penale* of December 7, 1917, at page 1049, arose from the fact that certain soldiers in connection with certain citizens had committed a crime, punishment for which so far as the soldiers were concerned certainly had to be administered by the military tribunal. On the other hand, the civil authorities were equally clear in the case of Courla and Alesi, that the civil offenders must come before the ordinary civil courts. The question arising in the mind of the writer (Av. v. G. Escobedo) is that, while justice in the military courts might find the accused guilty, there might be cases in the civil courts in which the accomplices of the military offenders would go not merely unpunished, but triumphant; the result being that justice condemns the offenders in one case and releases them in the other.

It had been supposed that the question of separation of tribunals was definitely settled and that in the case of complicity with military offenders, all should be tried before military tribunals. As a matter of practice, however, each one was taken to the appropriate tribunal with an anomalous result. The justification is that there are

many anomalies in times of war which under less stress would be resolved more logically. Reference is made to the words of Louis Blanc, *History of Ten Years, 1830-1840*, volume 5, Paris, Felix Alcan, editor, pages 185 to 190. A synopsis of his words follows: The first of these three laws made famous under the name of the law of disjunction was the work of rage—a cruel revenge for the verdict of Strassburg. It aroused revolt in the public conscience. How can it be? For one same crime, different judges? A division of trials, with community in crime? And who knows? A few paces from the tribunal by which the guilty soldiers of the rebellion were condemned to death another tribunal acquitted their accomplices. How can it be that for an offense by the same offenders, at one time, in the same town, two gates are open? Here the funeral march of those condemned to death, and there an ovation to the guilty ones who had been acquitted and to their judges.

In Italy, by the recent Act of 1917, there was re-established the death penalty merely for offenders against military law. The remarks are more or less inconclusive. The principal efforts of the writer have been to expose the anomaly of permitting the soldiers and their accomplices to be tried by different tribunals before which the latter might possibly escape.

These questions are of particular interest at the present time in view of the fact that the United States courts will shortly be called upon to decide somewhat similar questions. It will be recalled that in a preceding number comment was made upon the condemnation of certain offenders before the military courts of Italy for fraud in connection with contractors for the supply of shoes and other articles to the Italian army, and in that case, the final jurisdiction of the military courts was sustained. Under the American system of jurisprudence, there is a distinction between the manner in which treason is to be dealt with when it comes in the form of fraud against the civil branches of the government which purchase supplies and when it arises directly in connection with actual military operations. The ordinary rules of military tribunals have universally regarded it as entirely within the proprieties of the situation to try a man by a courtmartial and condemn him to death for treason, and this in a trial opposed to the principle of Anglo-Saxon jurisprudence which demands an open and public trial, and the admission of the populace to the courtroom. The death penalty, however, has always been recognized in the proceedings of the Anglo-Saxon criminal courts and for this reason the difficulties of the Italian law which does not recognize the death penalty are not encountered.

There is nothing but the temper of the people to save the civil offender from the same penalty as the military offender, for from the very rise of our system of jurisprudence, it has been a principle that when contractors defraud the government, or defraud others who supply the government, these offenders will come before the civil courts, will have counsel and will appear on the trial like any other criminal who will be judged by a jury of his peers, and not by the summary processes of the courtmartial. It would seem that the problem must be resolved in some such fashion as this, namely, that the processes of the ordinary courts of justice are to be preferred in dealing with offenders in civil life and that once the offenses are committed directly on the field or within the limits of the army, the military should have complete jurisdiction. On the other hand, when it comes to matters of desertion, defalcations in the army, and the like, the courtmartial seems to be the tribunal best adapted to the trial of such offenders. In this instance reference must be had to a recent book, namely, the *Life of Calhoun*, by Wm. M. Meigs, of the Philadelphia Bar, author of "The Life of Thomas Hart Benton," "The Life of Charles Jared Ingersoll," "The Growth of the Constitution," and other works. An interesting discussion is found at page 227, of volume I, as to the difficulties encountered while Calhoun was Secretary of War under Monroe, and the officers of the War Department at that time prided themselves that they had fairly exterminated frauds, felonies and defalcations by officers of the military forces. This, of course, was more or less of a Utopian dream.

The article in the December issue of *Case and Comment* by Major Judge Advocate, U. S. R., Joseph Wheless, in which is outlined the procedure for the trial of offenders in the army, is of interest in this connection. It is there stated that under the Ninety-second, Ninety-third, and Ninety-fourth Articles of War, many non-military crimes such as murder, manslaughter, assaults, rape, arson, burglary, robbery, larceny, embezzlement, frauds, and perjury, when committed by persons subject to military law are triable and punishable by courtmartial; and many such cases come for review to this office (Judge Advocate) and constitute the principal burden of its work. The author of this article asserts that the procedure of courtmartial is the perfection of simplicity and expedition, putting to shame the archaic and cumbrous forms of the common and statutory criminal processes.

In comparison with the accurate processes of the common law by which the interests of the offender are so greatly cherished, we

should be more apt to call some of the procedures of the courtmartial somewhat crude. The samples given in his article of the specifications of charge are precisely those used in the Philadelphia police courts, and many examples of the police court activities could be cited to show that the difference between the two is very little. The proceedings are more or less of the same nature and these are uniformly the ones found in magistrates' courts and justice of the peace courts which have not stood the tests of centuries of time and use. It must be recalled when one adopts a perfectly simple and exceptional method of trying offenders, he must count on use and the tests of time, and when he condemns the apparently slow processes of the criminal law and of the common law, he must recall that he has unjustly condemned something which has stood that very test of time, and in spite of all criticisms has proved to be the best method of trial that mankind has been able to provide.

Allowance must be made for the necessities of military authority, as trials are conducted from an entirely different point of view from that of ordinary criminal courts in times of peace. When one premises that the country is in danger, in dealing with offenses against that branch of the government which is actually fighting to maintain the integrity of the people as a whole, it is a first principle that it must above all things maintain its authority and proceed summarily against all offenders whose acts threaten its integrity. That being the case, the proceedings before a court martial are more or less of a summary nature, and while this does not mean that the trial is itself unfair, the presumption against the offender is far greater than in the case of ordinary trials in times of peace.

As a matter of interest the writer quotes some findings and specifications from actual police cases in the City of Philadelphia. The similarity between these pleadings and those pleadings outlined by Major Judge Advocate Wheless is apparent. For example, in the case of *Gallagher v. The Mayor*, a case tried in Philadelphia and which went to the Supreme Court of Pennsylvania, it is set forth as follows:

BUREAU OF POLICE.

Patrolman Hugh J. Gallagher.

Charge No. 1. Intoxication on duty:

Specification No. 1. That while on duty you were in an intoxicated condition. This on April 7, 1913.

Pleads not guilty.

Charge No. 2. Conduct unbecoming an officer:

Specification No. 2. In that while intoxicated as aforesaid you did, without just cause, commit an assault and battery on one Oscar

Timberlake, of 2223 Stewart Street, at Schuylkill Avenue, below Spruce Street.

Pleads not guilty.

This on April 7, 1913.

Now in deciding the case, the Police Board made the following findings:

"In the attached re-opened case of ex-Patrolman Hugh J. Gallagher, of the First District, the Court heard four witnesses who were not present at the first trial, all of whom testify they saw defendant on the day in question, and he was in a perfectly sober condition.

The Court in arriving at its conclusion has taken into consideration the following circumstances:

1. The defendant did not take any liquor, it being Jamaica ginger he took for cramps.

2. It is shown he merely brushed against plaintiff when passing, there being no conclusive evidence that he wilfully struck him.

3. It has been shown that defendant went to plaintiff's home and wanted to apologize for anything he might have done and that plaintiff refused to accept his apology, but intimated if there was \$10.00 or \$15.00 coming, he would not report him.

4. The previous good record of defendant which shows fourteen years' clean service.

We earnestly recommend that Patrolman Hugh J. Gallagher of the First District be reinstated to his former position with loss of pay from the date of his discharge from the service.

(Signed) Nicholas J. Kenny,
Captain of Police.
Wm. B. Mills,
Lieutenant of Police.
Chas. E. Kunkle,
Lieutenant of Police.

Approved: Geo. D. Porter (Sept. 9, 1913).

Approved: Rudolph Blankenburg (Sept. 10, 1913)."

If we compare this with some of the cases cited in the article at present under discussion, we find a host of abbreviations which certainly are not to be commended either as contributing to the brevity or to the definiteness of the proceedings. The lawyers' view of such a situation is far to be preferred to the brevity obtained by stringing out a dozen abbreviations in a line. In the next place there is a charge given on page 549 that "Private Lilborn L. Newton, * * * did wilfully, feloniously, with malice aforethought, unlawfully kill one John Sheffey, a human being, by shooting him with a rifle." No one acquainted with the ordinary procedure of the criminal courts could find an example of pleading which was more overburdened with verbiage. If the charge was murder, it should have been made murder, and no charge of murder would require one to prove that the person

killed was a human being. The apparent brevity of these proceedings comes more from the omission of the very thing which makes criminal proceedings ordinarily very long drawn out, namely, the mass of testimony both of ordinary witnesses and experts in the effort to give the accused criminal a fair trial. It is not intended by these criticisms to make unfavorable comment on the very interesting article written by Major Wheless nor to criticise his article as a whole, which gives to the public an interesting account of matters which are ordinarily considered extremely secret, but it is suggested that the simplicity in the proceedings is the same sort of simplicity as is that in the lower judicial tribunals and in our magistrates' courts, and that it is secured by the omission of what is generally considered essential.

It is interesting to note that in an article in this JOURNAL, Volume 8, Number 3, Mr. Robert W. Millar very ably discusses reforms in criminal pleadings. Pertinent to the present inquiry are models of criminal pleading under the English Indictment Act of 1915. In the case of murder for example, the complaint would read as follows: In case of murder—"Statement of Offense: Murder. Particulars of Offense: A. on the....day of.....in the County of.....murdered J. S." In the case of receiving stolen goods—"Statement of Offense: Receiving stolen goods contrary to Section 91 of the Larceny Act, 1861. Particulars of Offense: A. B. on theday of.....did receive a bag, the property of C. D., knowing the same to be stolen." In case of arson—"Statement of Offense: Arson, contrary to Section 3 of the Malicious Damage Act, 1861. Particulars of Offense: A. B. on the....day of.....in the County of.....maliciously set fire to a house with intent to injure or defraud." The draft submitted by Professor Mikell is along similar lines as is the case with the Massachusetts statute and the Illinois statute. When these forms are compared with the one given above of proceedings in the Police Courts of Philadelphia, which do not differ greatly from those in the Police Courts of New York, it may be seen that there is no vast difference between stating charges and placing under them specifications No. 1, No. 2, and the like, and giving the statement of an offense, and adding the particulars of offense. If the object of the proceedings is to make the accused acquainted with the nature of his offense, then the provisions requiring the omission of technical language are very apt. On the other hand, if the proceedings are designed to save the time of the court, and of the public, the adoption of a host of abbreviations might serve that purpose as well as anything else. It can only be repeated that the presumptions

in the case of a courtmartial are quite different from those in the case of a common law trial. It is also to be presumed that the courtmartial will be less rigid in applying strict interpretations as to the admissibility of evidence.

Returning again to our first problem of the separation of tribunals, it will be recalled that the assizes of Clarendon arose from precisely the same kind of a situation concerning the separation of tribunals when offenses were committed either by a layman with a churchman alone or by a combination either of the one sort or the other. The question in dispute was—whether church courts should try the offenders against the law or whether the common law courts should try them. One illustrious case is that of Judge Salmon de Roffe or Solomon of Rochester, who in the time of Edward I was apparently poisoned by a clerk in the church, and it was a long time before the question of where the clerk should be tried was settled. The celebrated case of St. Thomas of Canterbury is known to every reader of history, and how this famous prelate who fought vigorously for the trial of churchmen by the church, lost his life in a conflict with the king. If the king had lost, the authority of the church to punish such offenders and to maintain its own system of jurisprudence would have persisted. In the present case, the question is one of a more or less temporary nature inasmuch as it is decidedly to be hoped that war in general and this war in particular will not be of long duration, but problems of this kind are sure to arise in the very near future.

GEORGE F. DEISER.

DELINQUENCY IN WAR TIME

Our attention has repeatedly been called to an increase in the volume of juvenile delinquency in our cities and towns since the beginning of the European war. The *London Times* on November 8, 1916, quoted statistics to show that in various localities in England, in the course of the twelve-month preceding that date, juvenile delinquency had increased as much as 50% to 75%. (See this JOURNAL, March, 1917, p. 925.). Mr. Joel D. Hunter in this JOURNAL for July, 1917, p. 287, quotes from the Report on Dependent and Delinquent Children for 1916 from the Province of Alberta, which shows an increase of 25% in the total cases of juvenile delinquency in that province as compared with the preceding year.

Both in England and in Canada this unwelcome phenomenon has been believed to be due chiefly to the fact that in thousands of in-

stances fathers and older brothers are away. The increased delinquency, therefore, is described as a consequence of the "broken" or "crippled" home. There is, undoubtedly, much truth in this contention. The excellent study by Mr. Shideler reported in the present number, and others of the sort as well, support the view. But Mr. Hunter, in the note referred to above, quotes figures from his own office—Probation Department of the Juvenile Court of Cook County, Illinois—to show that from May, 1916, to May, 1917, within the jurisdiction of his office, juvenile delinquency had increased more than 50% notwithstanding that within that period there had been practically no "breaking" or "crippling" of homes here on account of enlistments. The industrial system was at its best and schools were in operation as usual. As compared with the year preceding the distinguishing feature of the one referred to is a series of exciting events of war, which are vividly pictured in the daily press, in the lecturer's story and in the moving picture. These, it must be assumed, stimulate the imagination and the spirit of adventure in the young and so contribute to the swelling tide of delinquency. If this is correct, obviously, there is need for counter irritants. To supply them is to render a national service of such generous proportions that it should solace one who is unable to enter more directly into war work, and stimulate the ingenuity of the best personalities. The success of teachers, scout-masters, play-ground directors, probation officers, etc., in meeting their responsibilities in these times will spare us the embarrassment of wasted energy at home and help to assure progress in all aspects of public welfare after the war.

ROBERT H. GAULT.

REFORMS OF THE CRIMINAL LAW

JOHN P. BRISCOE.¹

The Constitution of the American Institute of Criminal Law and Criminology provides that the president of the institute shall make an address at the annual meeting in which "he shall review the field of criminal law and criminology" and its results for the preceding year, together with such suggestions and recommendations for the ensuing year as may be considered for the best interest of the institute.

The object and purpose of this Institute is to advance the scientific study of crime, criminal law and procedure; to formulate and promote measures for solving the problems connected therewith; and to co-ordinate the efforts of individuals and of organizations interested in the administration of certain, speedy justice.

Criminology is defined as the scientific study and doctrine of crime and criminals, but in its development it has taken a wider meaning and embraces larger researches. In its practical application, it has inquired into the sources and causes of crime, it has collected criminal statistics and deduced valuable lessons from them, it has sought and obtained guidance in the best methods of prevention, repression and forms of procedure. The champions of law and order have been greatly aided in carrying on the continual combat with crime, and dealing with the most complicated of social problems.

The work and labor of the criminologist has strengthened the hands of the administrators of the law, emphasized the paramount importance of child-rescue and judicious direction of adults, held the balance between penal methods advocating the moralizing effect of open-air labor as opposed to prolonged isolation, and insisted upon the desirability of indefinite detention for all who have obstinately determined to wage perpetual war against society by the persistent perpetration of crime.

Thus, it will be seen we are moving steadily forward to a future improved treatment of the criminal, and may thus arrive at the increased morality and greater safety of society. Very appreciable advance has been made in the increased attention paid to juvenile and adult crime, the acceptance of the theory, now well established, that there is an especially criminal age in the sense of a period when the

¹Justice of the Court of Appeals, of Maryland.

Address of the retiring president of the American Institute at the annual meeting in Saratoga, N. Y., Sept. 2, 1917.

moral fiber is weaker and more yielding to temptation to crime, when happily human nature is more malleable and susceptible to improvement and reform.

The prevention of crime and the treatment of the criminal are largely connected with and may be controlled by proper legislation; and, as crime cannot be entirely suppressed, it is important that such laws should be enacted as will tend to reduce it, and to ameliorate the condition of the criminal.

To this end, the Constitution of the Institute provides, there shall be annually appointed certain standing, general and special committees, who shall deal with the specific problems, the subject matter for the consideration of the committees, and report upon such subjects as may have been decided upon for discussion and consideration by this body. The reports of these committees will be presented in regular order, as they now appear upon the program, and after discussion and consideration they will be open to such action as may be determined upon by the Institute. These committees cover a wide field of criminal law and the important subjects of criminology, such as insanity and criminal responsibility, probation and suspended sentence, drugs and crime, crime and immigration, indeterminate sentence, release on parole and pardon, and many others, which will more fully appear by reference to the program now before you.

In view of the recent decision of the Supreme Court of the United States in *ex parte* United States, reported in 242 U. S. 27, wherein it is held that the federal judges are without power to suspend imposition or execution of sentence permanently in criminal cases, without legislation, the subject matters of probation and suspended sentence, indeterminate sentence, release on parole and pardon, become important and worthy of our careful consideration.

The facts of the case presenting the question to the Supreme Court were these: An accused person was sentenced in a district court of the United States pursuant to an act of Congress, and the court then immediately made an order that execution of the sentence be suspended "during the good behavior of the defendant," the effect of which, if sustained, would have been to exempt him permanently and absolutely from the punishment provided by the act and reflected in the sentence.

Mr. Chief Justice White, in speaking for the Supreme Court in a carefully prepared opinion, said (I quote from the syllabus of the case):

"The Constitution assigns to the legislature the power to enact laws defining crimes and fixing the degree and method of punishment;

to the judiciary the power to try offenses under those laws and impose punishment within the limits and according to the methods therein provided; to the executive the power to relieve from the punishment so fixed by law and so judicially ascertained and imposed.

"The power of Congress to fix punishment for crime includes the power, by probation or other suitable legislation, to equip the courts in advance with such latitude of discretion as will enable them to vary and control the application of punishment to suit the exigencies of each case, in accord with obvious considerations of humanity and public well-being.

"But the courts, albeit under the Constitution they are possessed inherently of a judicial, discretionary authority which is ample for the wise performance of their duties in the trying of offenses and imposing of penalties as the laws provide, have no inherent constitutional power to mitigate or avert those penalties by refusing to inflict them in individual cases.

"At common law, while the courts exercised a discretion to suspend either imposition or execution of sentence temporarily for purposes and in ways consistent with the due enforcement of the penal laws, so as to facilitate action by the pardoning power and avoid miscarriages of justice, they neither possessed nor claimed the power of permanent refusal to enforce them.

"In weight and reason the decisions of the state courts deny the power of suspension here in question.

"The order of suspension, being essentially unconstitutional, may not be sustained because it accords with a practice (of long standing though intermittent and not universal) indulged for the highest motives by many federal judges in Ohio and elsewhere."

Prior to this decision, the practice had existed in some of the state and federal courts to permanently suspend a sentence, and the asserted power was upheld. But the case of *ex parte* United States removes all doubt, as to the want of this power, except in those cases where this power has been exerted and sanctioned by legislation. So far as wrong resulting from an attempt to do away with the consequences of the mistaken exercise of the power in the past is concerned, Mr. Justice White says complete remedy may be afforded by the exertion of the pardoning power: and so far as the future is concerned, that is, the causing of the imposition of penalties as fixed to be subject, by probation legislation or such other means as the legislative mind may devise to such judicial discretion as may be adequate to enable courts to meet by the exercise of an enlarged but wise discretion the infinite variations which may be presented to them for judgment, recourse must be had to Congress, whose legislative power on the subject is in the very nature of things adequately complete.

In some of the states the power is conferred by statute upon the

courts to suspend sentence generally or for a definite time; and they may make such orders and impose such terms as to costs, recognizance for appearance, or matters relating to the residence or conduct of the convicts as may be deemed proper, and if the convict is a minor, the courts may make such orders as to the detention in any care or custody as may be proper.

It would, therefore, seem to be clear in the interest of the administration of the criminal law in the federal courts and for considerations of humanity and public welfare, that the power to suspend sentence and to parole should be controlled and covered by an act of Congress, with such limitations as would not conflict with either the legislative or executive authority as fixed by the Constitution. My own observation and experience upon the bench has convinced me that the statute in force in my own state, empowering the suspension of sentences in criminal cases, is a useful one, if the power is properly and judiciously exercised.

During the past year, three new committees have been appointed: A. Public Defender; B. Teaching Criminalistics in our Colleges and Universities, and C. Drugs and Crimes. These are important subjects to be considered by the Institute, and the subjects will be more fully discussed in the reports of these committees.

Two new subjects, it appears, may be suggested for future consideration, viz., the relation of national prohibition to the commission of crime, and the use of convicts, as laborers, in our army and navy, or upon the farms, and in the occupational and industrial business and pursuits of the country.

The subject of the inferior criminal courts of our various cities could also be a topic of interest, and a committee on criminal courts would be an important addition to the list of the committees of this Institute.

While I have had no opportunity to consult with the various committees or to examine their reports as made and to be read at this meeting, I trust that the suggestions made in this paper will not in any way conflict with those made by them upon the various subjects to be submitted for consideration.

It is apparent that the reforms in the criminal law are being gradually effected by both federal and state legislation, and the modernization of criminal procedure is being so adjusted as to be a guarantee to every man that for any injury done to him in his person or property, he will have justice and right freely without sale, fully

without any denial and speedily without delay, according to the law of the land.

While the present system of the administration of the law cannot be held to be unsound, yet it may be open to reform in some of its details, viz., in the reduction of the costs of litigation and in the solution of the problem of the law's delay.

The members of this Institute of Criminal Law may congratulate themselves upon the success of our work in the promotion of criminological science and in the consideration of the practical problems connected with the administration of criminal justice. There is, however, further and urgent work in the accomplishment of the objects for which this institute was organized, and this will be best attained by a co-operative effort upon the part of those interested in the various problems connected with the Institute for the advancement of the common good.

In conclusion, permit me to say that in preparing this very brief paper, I have been influenced by the sole desire of presenting some practical thoughts or suggestions that might be of service or advantage to the Institute, and not merely to furnish entertainment for the members. The field of criminal law and criminology is a broad one, and the science of jurisprudence is still open for advancement. The law has not been reformed to a state of absolute perfection, and if I have submitted any suggestions that will be found of any help or advantage to this Institute or that will result in improving the procedure or the laws, I will be satisfied.

I now declare the annual meeting of the Institute for the year 1917, to be in session and ready for the transaction of business.

INSANITY AS A DEFENSE TO CRIME IN LOUISIANA¹

W. O. HART²

I find the first legislative reference to insanity in criminal cases in the Statutes of Louisiana in the year 1844, when by Act No. 32, of that year, approved February 24th, it was provided as follows: "Whenever any person who is or may be arrested, and in custody or in prison, to answer for any crime or crimes, offense or misdemeanor, before any of the courts of this state having criminal jurisdiction, shall be acquitted thereof by the jury of trials, or shall not be indicted by the grand jury by reason of the insanity or mental derangement of such person, and the discharge and going at large of such person, shall be deemed by the same court to be dangerous to the safety of the citizens or to the peace of the commonwealth, the said court be and is hereby authorized and empowered to commit such person to the Insane Hospital of New Orleans, or any similar institution in any parish within the jurisdiction of the court, there to be detained until he or she be restored to his or her right mind, or otherwise delivered by due course of law.

"Whenever the Grand Jury upon any inquiry which they may hereafter make as to the commission of any crime or misdemeanor by any person, shall omit to find a bill for the cause aforesaid, it shall be the duty of such jury to certify the same to the said court.

"Whenever the jury of trials, upon the general issue of not guilty, shall acquit any person for the cause aforesaid, it shall be the duty of such jury, in giving in their verdict of not guilty, to state that it was for such cause."

This law was re-enacted in 1855 (No. 121) and was carried into the last revision of the Statutes, 1870, as Sections 993, 994 and 995, and duplicated in 1778, 1779 and 1780, with the change, however, from the Insane Hospital of New Orleans to the State Insane Hospital, of which there are now two, but the criminal insane are sent to the one at Jackson.

The jurisprudence of Louisiana, is, that when the question of insanity of the defendant in any case is at issue, the jury are to be told that every man is presumed to be sane, and to possess a sufficient

¹Read before the Congress of Alienists and Neurologists, Chicago, July, 1917.

²Member of the Bar of New Orleans, La.

degree of reason to be responsible for his crimes, until the contrary be proved to the satisfaction of the jury; and that to establish a defense on the ground of insanity it must be clearly proved that, at the time of committing the act, the accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know he was doing wrong.

This principle was announced in the case of *State v. Scott*, 49th Louisiana Annual Reports, 253 (1897), where in the syllabus prepared by Mr. Justice Miller, who rendered the opinion, it was said:

"The law presuming sanity, the burden is on the accused urging his insanity as a defense to prove it.

"That proof must satisfy the jury the accused was not of sane mind at the time of the act charged. They should consider all the testimony before them, whether presented by the accused or the state, and give due weight to the presumption of sanity. If on the whole testimony and giving to the presumption of sanity its full operation, they are satisfied the accused was insane when the act was committed, they should acquit; but, if not thus satisfied, they should deem the accused sane and responsible."

And the court reversed the judgment and set aside the verdict of the jury, remanding the case for a new trial, because the charge of the District Judge was not what it should have been in accordance with the reasoning of the court.

Mr. Justice Breaux, afterwards Chief Justice, and now an honored member of the Louisiana Bar, to which he returned after serving on the court for twenty-four years, dissented and said:

"Under the common law every man is presumed sane until the contrary be proven.

"Insanity, as a plea, should be proved as a substantive fact by the accused, on whom the burden of proof rests. Being of the opinion that the proof of insanity at the time of committing the act ought to be made as clear and satisfactory by the accused to secure his acquittal on the ground of insanity as the proof of committing the act ought to be made evident by the state in order to find a sane man guilty, I respectfully dissent."

As the burden of proof of insanity is on the defendant, it is proper for the trial court to refuse to charge that the state must prove beyond a reasonable doubt that the prisoner was sane when he committed the act and not error on the contrary to charge, that the law presumes the sanity of every man, and that it devolves on the prisoner, under a plea of insanity, to satisfy the jury by a preponderance of proof that he was insane at the time of the commission of

the act, with the qualification, however, given in the quotation from the Scott case above referred to.

And, therefore, the Supreme Court in the case of *State v. Coleman*³ held that it was proper for the District Judge to refuse to charge: "If some controlling disease was in truth the acting power within the prisoner which he could not resist, or if he had not a sufficient use of his reason to control the passion which prompted the act complained of, he is not responsible."

When the presumption of sanity and insanity come in conflict, the latter must give way, and where all the ingredients of a crime, save sanity, are admitted or proved, and there is no other evidence on the subject, the presumption of sanity is sufficient to establish or maintain that condition, and to rebut the presumption of innocence. The mere plea of insanity does not affect the presumption of sanity, but in the face of such plea, unsupported by proof, it is the duty of the judge to instruct the jury that the law presumes the defendant to be sane, and that they ought to be governed by the law.

As said in one case: "A plea of insanity, the last resort of imperiled criminals, will surely not be listened to when the defendant's own witnesses disprove it."⁴

The case of Scott, *supra*, in holding that it was error to charge that sanity must be established beyond a reasonable doubt expressly overruled *State v. Clements*,⁵ *State v. DeRance*,⁶ and *State v. Coleman*, *supra*, where the contrary doctrine had been announced, though the court in the DeRance case found that the authorities and text writers were in conflict on this point, but adopted the rule that:

"Insanity must be proved beyond a reasonable doubt," for practically the same reasons as were given in the dissenting opinion of Justice Breaux, which I have before quoted in full.

In the Scott case, the court quoted approvingly from *State v. Coleman*, *supra*, where it was held that the District Judge did not err in refusing to charge: "If the jury entertained any doubt of the prisoner's sanity they must acquit him of guilt," saying that: "The burden of proof is upon the party setting up the defense."

Again referring to the Scott case, I quote the following from the opinion of the court:

"It will suffice if the jury are told, in effect, that the burden of proof is on accused to establish by clear convincing proof the insanity

³27th Louisiana Annual Reports, 691 (1875).

⁴*State v. George*, 37th Louisiana Annual Reports, 786 (1885).

⁵47th Louisiana Annual Reports, 1008 (1895).

⁶34th Louisiana Annual Reports, 186 (1882).

he urges as a defense; that the presumption of sanity is to be taken into consideration, and exercise its full influence, along with all the testimony before them, whether produced by the accused, or by the state; and if, on the consideration of the whole testimony, giving due weight to the presumption of sanity, they are satisfied the accused was not of sane mind when the act charged was committed, they are to acquit, but, if not thus satisfied, they are to hold the accused sane and responsible."

In disapproving the charge of the judge which caused the reversal of the sentence, the setting aside of the verdict, and the remanding of the case, the court said:

"The charge in this case implies, if it does not express, that though there may be a preponderance of testimony before the jury to show that the accused was insane at the time of the act, yet they may convict. It is not easy to convince that with this preponderating proof they can deem guilt established beyond a reasonable doubt—the prerequisite of any conviction. Can, then, this charge be sustained, which exacts punishment upon preponderating proof producing not only a reasonable doubt of guilt, but preponderating to carry the conclusion that no guilt can exist because of the absence of that moral accountability, the basis of all punishment for crime. Between hanging the maniac or bringing to the scaffold one whose insanity is established by a preponderance of testimony, before the jury that pronounces him guilty, is a difference in degree not of principle. A conviction, when insanity is thus proved, this charge sanctions. If we turn to the authority of text books and decisions, it must seem difficult to maintain the charge, conceding all due weight to the decisions of our predecessors and types of that class in some of the decisions of the courts of other states. In *State v. Spencer*, 21, N. J. Law, 196, the court instructed, if in weighing testimony of insanity against that of sanity, the scales are balanced, or so nearly poised as to leave a reasonable doubt of insanity, the accused was to be deemed sane. This decision that sustains punishment when guilt is ascertained by the balanced or nearly poised scale is in marked contrast with the rule that exacts proof of guilt beyond all reasonable doubt. In one of the text books there is the comment that this decision has been departed from in the New Jersey courts."

Intoxication to such a degree as to render the accused incapable of malice in the perpetration of a homicide is a special defense, like a plea of insanity, and puts the burden of proving it upon the party urging it, and its truth must be established by a fair preponderance of evidence; and while the state must prove malicious intent beyond reasonable doubt, it is not its duty to prove a negative by showing that accused was *not* intoxicated to such a degree as to render him incapable of entertaining malice at the time of the homicide beyond a reasonable

¹Bishop Criminal Procedure, Section 671.

doubt; the judge was, therefore, right in refusing to charge: "If the jury has a reasonable doubt whether defendant was intoxicated to such a degree as to create a state of mental confusion, excluding the possibility of a specific intent to take life, or positive premeditation, then the verdict should be guilty of manslaughter."⁸

The rule in Louisiana is that the question of insanity may be presented even on a motion for a new trial, but the motion must be supported by sufficient evidence tending to substantiate the insanity, or it will not be considered. Where it is evident that the defendant had will power and could control himself and manage his business, he was held not to be insane, although he entertained extraordinary and unreasonable ideas on certain subjects.

State v. Lyons,⁹ is very interesting; the defendant in that case had murdered the District Attorney for the Parish of Orleans, was convicted of murder and sentenced to be hanged, and the opinion by Mr. Justice (now Chief Justice) Monroe, with a syllabus prepared by himself in twenty sections, occupies forty-three pages, affirming the judgment and in due course the defendant was executed. I somewhat condense part of the opinion of the court as follows:

The judge instructed the jury that in order to convict accused, they must find not only that he knew the nature and quality of the act charged, at the time of its commission, and knew it was wrong, but that he was mentally capable whether to commit it or not, and of governing his conduct by such choice, and that he should be acquitted if they found that, though he committed such act, knowing its nature and knowing it to be wrong, they also found that he was impelled thereto by the irresistible impulse of a lunatic, and not the passionate impulse of a sane man; and that insane delusion excuses an act otherwise criminal, when the delusion was such that the person under its influence firmly believed in the existence of some imagined fact or condition which, if existent, would have excused such act, as when the belief was that the party killed had an immediate design on his life, and under that belief the insane man killed his supposed enemy in supposed self-defense, but that if the delusion was that the party killed had acted injuriously toward his slayer, or had committed any act which did not expose the life of the latter to imminent danger or subject his person to great bodily harm, it would not excuse or justify the killing. The requested additional charge that: "If the jury believe from the evidence that defendant insanely believed at the time of the commission of the act either that the imagined evil was so intolerable as to make life-taking necessary or justifiable in order to avert it, or that life-taking was an appropriate and just way of getting rid of it, he is entitled to be acquitted," was properly refused,

⁸*State v. Hill*, 46th Louisiana Annual Reports, 27 (1894).

⁹113th Louisiana Annual Reports, 959 (1904).

being calculated to mislead the jury. The doctrine of moral insanity, which consists of irresistible impulse co-existent with mental sanity, has no support either in psychology or law.

Our courts have held that: "If a person, being in possession of his mental faculties, voluntarily gets into a fit of drunkenness, and during such drunkenness commits a homicide under a diseased mental condition occasioned by the same, he cannot set up such diseased mental condition as an excuse for his act. * * *

"In order that a man should stand excused for a homicide committed during drunkenness and while in a diseased mental condition, the diseased mental condition which excuses the homicide should be able to be successfully urged as an excuse for the act of getting drunk.

"The effect of drunkenness upon the mind and upon men's actions when under the full influence of liquor are facts known to everyone, and it is as much the duty of men to abstain from placing themselves in a condition from which so much danger to others is to be apprehended as it is for men to abstain from firing into a crowd, or doing any other act likely to be attended with dangerous or fatal consequences. It would open the door wide to the commission of crime were we to justify the commission of a homicide committed under a condition of mind designated as 'delirium tremens,' when it was, in all probability nothing more or less than the condition of mind usually resulting from a condition of thorough drunkenness. It would be utterly impossible to distinguish between the two conditions of mind, if in reality there be a difference between the two.

"It is, of course, as possible for an insane man to get drunk as for a sane man. The addition of drunkenness to insanity does not withhold from such person the protection due to insanity, but, when such a person commits a homicide during drunkenness, reliance must be placed upon the original insanity itself, not upon the subsequent drunkenness."¹⁰

"A homicide committed during a drunken debauch is not rendered excusable by the fact that long-continued indulgence in drinking by the party committing the killing had created in him a desire to drink so strong that it was out of his power to resist, * * * even though this drunkenness may be such at the time of the commission of the homicide as to render his mind incapable of knowing right from wrong. If the debauch be one continuing voluntary drunken debauch, starting with the sanity of the party engaged in it, the mere length of time the debauch may extend over is immaterial. Drunkenness for a week no more excuses a homicide committed as its immediate and direct result than would drunkenness for an hour."¹¹

Any state of mind resulting from a state of drunkenness, unless a permanent and continuous result, does not excuse the commission of the crime.

¹⁰*State v. Kraemer*, 49th Louisiana Annual Reports, 766 (1897).

¹¹*State v. Haab*, 105th Louisiana Reports, 230 (1901).

"The correct rule is * * * that it must appear, in order to excuse the act, that the prisoner at the time of committing it was in such a state of mental insanity, not produced by the immediate effects of intoxicating drinks, as not to have been conscious of the moral turpitude of the act. Under this rule, it is settled that insanity produced by delirium tremens affects the responsibility in the same way as insanity produced by any other cause * * *. In other words, when drunkenness is *the remote* cause of insanity, where the latter proceeds from causes which are themselves the effect of antecedent excesses, the party is not responsible. The law looks to the proximate cause of the insanity, and if that be drunkenness, it is no excuse for crime."

Thus, the requested charge that: "If, * * * accused, at the time of inflicting the mortal stroke, was insane, and not capable of self-control from the use of intoxicating liquors or other poison, administered and sold to him by the deceased, the jury should not find him guilty," was properly refused, the court saying: "It is too broad, and would have led the jury into the belief that the frenzy of drunkenness is an excuse for homicide."¹²

So, a charge: "That drunkenness does excuse crime where, in the absence of criminal intent, the condition of accused was such that he knew not what he was doing, and intended no offense * * * is erroneous as an abstract proposition of law."¹³

While drunkenness is not an excuse for crime, but on the contrary is an aggravation, yet: "Intoxication of the accused may be invoked to negative malice or deliberate intent, in the absence of evidence, *aliunde*, to prove premeditation. The intoxication must be of such a character as to create a state of mental confusion, excluding the possibility of a specific intent to take life, or, positive premeditation."

The court further held that it was entirely too liberal to accused to charge: "That the intoxication of the accused could mitigate the homicide to manslaughter, if such intoxication in the opinion of the jury was of such a character as to incapacitate the accused from forming a deliberate intent to kill the deceased, unless the evidence would satisfy the jury that he had intoxicated himself for the purpose of provoking deceased into a difficulty, and of then killing him."¹⁴

In *State v. Wilson*,¹⁵ the judgment was set aside and the case remanded owing to improper remarks of the District Attorney, and in the course of its opinion the Supreme Court quoted from one of the bills of exception as follows:

"The court charged the jury that drunkenness was no excuse for committing a crime, unless that drunkenness had been of such long standing as to render the party unaccountable for his acts, but refused

¹²*State v. Watson*, 31st Louisiana Annual Reports, 379 (1879).

¹³*State v. Washington*, 36th Louisiana Annual Reports, 341 (1884).

¹⁴*State v. Trivas*, 32d Louisiana Annual Reports, 1086 (1880).

¹⁵124th Louisiana Reports, 82 (1909).

to charge 'that it was an excuse unless the party got drunk for the purpose of committing the crime,' as I thought that too broad and not the law," commented on same as follows:

"We think that the requested charge was not explicit enough, in that it did not explain when it is that intoxication is a defense to crime; or, in other words, on account of what particular feature of the case on trial that defense was admissible.

"The judge had therefore the right to refuse it. But as the case is to be tried again, we will take occasion to say that the judge's charge was not quite full enough."

And in the case of *State v. Hogan*,¹⁶ in discussing the question of drunkenness as producing insanity, which was pleaded in defense, the court said:

"Where the defense was insanity, and defendant's evidence tended to show that his alleged condition resulted from chronic drunkenness, and evidence on the part of the prosecution tended to show that the defendant had at no time been ill since his arrest, it was competent for the state to prove in rebuttal by a physician that a man suffering from such a mania could not recover within ten days without medical treatment."

The rulings of the Supreme Court of Louisiana, regarding evidence of insanity have generally been uniform and consistent to the effect that: "Insanity, when pleaded in defense of a criminal act, such as homicide, must be clearly shown to have existed at the time of the commission of the act."¹⁷

In the case of *State v. Hays*,¹⁸ Mr. Justice Howe, one of the ablest of the many eminent men who have sat on the bench of the Supreme Court of Louisiana, in holding that:

"In a criminal prosecution for the crime of murder the witnesses for the accused may, under the plea of insanity, be permitted to give to the jury the acts, declarations, conversations and exclamations they saw, had with, and heard the accused make at any time shortly before, at the time of, or after the killing, analyzed the subject in the following strong and pertinent language:

"The defense in this case was insanity. In the solution of the question presented by the bill of exceptions, it becomes necessary, therefore, to inquire what scope is allowed to the prisoner in establishing such a defense by the enlightened spirit of modern jurisprudence.

"Insanity is a disease. It has its pathology and its symptoms, and it would seem that its existence can be determined only by a careful scrutiny of those symptoms. The tree is to be known by its fruits; the condition of the hidden mechanism is to be ascertained by those communicated movements which are external and apparent. To this end the usual expressions of a mental state are original and

¹⁶117th Louisiana Reports, 863 (1906).

¹⁷*State v. Graviotte*, 22d Louisiana Annual Reports, 587 (1870).

¹⁸22d Louisiana Annual Reports, 39 (1870).

competent evidence. If they are the natural language of mental alienation, they furnish satisfactory, and sometimes the only proof of its existence. It is true, that such expressions may be feigned and often are; but whether they were real or feigned is for the jury to determine. Hence, the rule prevails that as *indicia* of the mental condition, not only the acts, but the conversations, exclamations and declarations of the person may be shown. Of course, this rule should not be extended beyond the necessity on which it is founded—mere narrative or statement by the accused, as that at a certain time he said or did something, or at a certain time he was insane must be excluded; but testimony of such deportment, action, complaints, exclamations, declarations and expressions, as usually and naturally accompany and furnish proof of an *existing* malady, ought to be freely admitted.

"We think it equally well settled that all such *indicia* occurring after the commission of the offense, may be shown, and that the judge, therefore, erred in confirming the testimony to *acts* done before the homicide. It is true, that mania is often simulated, and it is quite likely that the danger of simulating may increase after the commission of a homicide; but this consideration relates rather to the effect of the testimony than to its admissibility. It may have little weight; but such as it has the jury must estimate. Previous or subsequent insanity in itself is no matter of excuse; the mania must have existed at the time the act was done; yet evidence of the presence of the malady, either before or after the act is proper to be weighed by the jury, for the purpose of forming a conclusion whether insanity existed at the time the alleged crime was committed. And this evidence, we apprehend, may be identical in character with that which is admitted to establish mental unsoundness prior to the act."

The judgment sentencing the defendant and the verdict of the jury were accordingly set aside and the case remanded for a new trial.

Judge Howe, who before coming to Louisiana, had been a member of the Bar of New York, reinforced his conclusions with citations of authorities from the courts of many states other than Louisiana.

In *State v. McIntosh*,¹⁹ the Hays case was quoted by the court in support of the following propositions:

"It is as important that a person should not be required to plead to an indictment for crime or be tried for his life or liberty while he is insane as it is that he be not held responsible for the acts he committed while insane.

"The question of sanity or insanity of the accused at the time of the alleged crime must be decided by the jury along with all other questions pertaining to his guilt or innocence, but a plea of *present insanity* challenges the right of the state to proceed with the prosecution, and, if filed before the trial by jury has commenced, it ought

¹⁹136th Louisiana Reports, 1000 (1915).

to be heard and decided by the judge before allowing the prosecution to go on.

"Defendant's plea being insanity, the court properly refused to charge that the prisoner is entitled to an acquittal if on all the evidence there is a reasonable doubt of his sanity at the time of the commission of the act, and properly charged, instead, that the defendant has to prove his insanity by a fair preponderance of evidence."²⁰

While our courts are liberal in admitting testimony in favor of an accused on his plea of insanity, the evidence must be presented with due diligence and technicalities will not avail him in this regard.

For instance, in the case of *State v. Manceaux*,²¹ the court through Chief Justice Bermudez said:

"It is not enough for an accused who moves for a continuance on the ground of the absence of a material witness duly subpoenaed to swear that he was afflicted before the occurrence with a disease which left as a trace a temporary aberration of mind, rendering him irresponsible.

"Necessarily, he must have had lucid intervals, since the aberration was temporary.

"He should have set forth the fact that at the time of the commission of the act he was insane and irresponsible, exclusively to the knowledge of the absent and wanted witness."

What was said by the Supreme Court in the case of *Eloi v. Eloi*,²² which was a civil suit to have the defendant declared insane, has been often referred to in criminal cases and states the law clearly and concisely:

"The opinions of witnesses, who are not physicians or experts in matters of insanity, touching the condition of the mind of a human being, are entitled to little or no weight as evidence in a trial involving the alleged insanity of a person.

"Such witnesses should state facts and incidents in the life and conduct of the party, from which the court alone is authorized to draw inferences and legal deductions touching the true condition of the mind of the person on trial for interdiction. (Interdiction is the Louisiana term for lunacy proceedings).

"Great weight and legal effect will be given to the opinion and report of physicians and experts appointed to inquire into the condition of the party.

"Where non-expert opinion testimony as to insanity has been received on the stand, evidence tending to show the expression of an inconsistent opinion by the same witness is always admissible in rebuttal."²³

²⁰*State v. Johnston*, 118th Louisiana Reports, 276 (1907).

²¹42d Louisiana Annual Reports, 1164 (1890).

²²36th Louisiana Annual Reports, 563 (1884).

²³*Hogan case, supra*.

"Testimony given by the accused in his own behalf that at the time he had made certain statements 'he was drunk or under the influence of dope' can be disproved by the testimony of 'non-expert' witnesses."²⁴

"The trial court has much discretion in the matter of permitting hypothetical questions to be propounded to an expert witness for the purpose of eliciting from him his opinion as to the sanity of the accused at the time when the homicide with which he was charged was committed; this discretion covering both the form and the substance of the question."

"When the hypothetical question which counsel for the defendant proposes to submit to the expert as a premise on which to express an opinion as to the sanity of the accused includes matters as to which there has been as yet no testimony before the jury, and as to which he simply declares he expects to produce testimony, he should at least make the offer conditioned upon an obligation upon his part to subsequently offer such testimony. When the trial court has refused to allow the question to be asked on the ground that the premises on which the question is based is as to matters not supported by testimony as yet before the jury, the accused complaining of the rulings should be able to show by the record that such testimony was in fact subsequently placed before the jury."²⁵

In the case of *State v. Smith*,²⁶ the court said:

"While we are far from holding that imbecility and insanity can be established only by expert testimony, we are of the opinion that it is within the province of the trial judge to determine whether witnesses offered as experts, as he says that the witnesses in question were offered, are to be heard in that capacity. Before a witness can be permitted to testify as an expert, his fitness and character as such should be established by a preliminary examination; and in ascertaining his competency the court may examine the witness himself, or may find the fact from the testimony of others. This fitness of a witness to testify as an expert is a question of fact, and it is addressed in every instance to and lies within the sound discretion of the trial court. A non-expert witness who had adequate means of becoming acquainted with the mental state of a person whose sanity is in issue, may, no doubt, give his opinion, based upon facts to be stated by him, as to whether such person was insane at the time of a specific occurrence. And we think that such an opinion would be admissible, subject to the limitation mentioned, upon the question whether the person inquired about had been insane, or had been an imbecile throughout his life. But without the limitation, it would not be admissible * * *. And as, in the case at bar, it does not appear that anything more was to be elicited from the witnesses than their opinions, which the judge states in his return was the sole purpose for

²⁴*State v. Ryan*, 122d Louisiana Annual Reports, 1095 (1909).

²⁵*State v. Ayles*, 120th Louisiana Reports, 661 (1908).

²⁶106th Louisiana Reports, 33 (1901).

which their testimony was offered, upon the case as thus presented, we find no sufficient reason for disturbing the judgment appealed from."

To the same effect was *State v. Montgomery*:²⁷

"The testimony of non-expert witnesses regarding sanity may, under proper safeguards and under certain state of facts, be admitted."

But in *State v. Heidelberg*,²⁸ the court concluded to be not too liberal by saying:

"The hearsay opinion of even an expert on insanity is not admissible in evidence."

In *State v. Charles*,²⁹ the court laid down certain rules where insanity was a defense in this language:

"Where a plea of present insanity is made on behalf of the accused, the judge may appoint a commission of experts to inquire into the mental condition of the defendant, or may refer the issue to a jury.

"The insanity of a person whose mental condition is at issue cannot be proved by reputation in the family or by general reputation."

"A general objection to a charge on the subject of insanity, accompanied by no request for special instruction, will not avail."

In the case of *State v. Richmond*,³⁰ where the defendant was charged with murdering her new born babe, the court said:

"The accused offered a physician as an expert witness, by whom to prove that puerperal mania, or insanity, was a common disease after childbirth, and often took on the form of homicidal mania, and the trial judge disallowed the testimony, because no proper foundation had been laid for its introduction. In support of his ruling, he states that, while it was in proof that the accused occasionally had spasms, they were not shown to have occurred at the time of the birth of the child, nor to have been referable in it. That, outside of the statement of the accused, there was no satisfactory proof that she was alone and unassisted at the birth of her child. We cannot perceive any analogy between the evidence introduced and that which was offered and refused. In the absence of all proof tending to show any derangement of the mind of the accused at the time she gave birth to the child, or, indeed, even tending to show what was her condition at the time, or that she was alone and unattended, expert testimony, like the one in question, could serve no valuable purpose and was inapplicable and inadmissible, and properly rejected. It was irrelevant."

In the case of *State v. Paine*,³¹ it was held:

"The trial judge having selected and appointed competent phys-

²⁷121st Louisiana Reports, 1005 (1908).

²⁸120th Louisiana Reports, 300 (1908).

²⁹124th Louisiana Reports, 744 (1909).

³⁰42d Louisiana Annual Reports, 299 (1890).

³¹49th Louisiana Annual Reports, 1092 (1897).

icians as experts to make an examination of the mental condition of the defendant, with the object in view that they, as witnesses, should be better prepared to intelligently state his situation to the jury at the trial, it was not a condition precedent to the trial being proceeded with that the physicians should make a written and detailed report of such an examination to the court."

And in *State v. Douglas*,³² the Supreme Court upheld the action of the District Court in refusing the motion of the defendant for the appointment of a board of experts to examine into his sanity for the reason that the very physicians named in the order had at the request of the defendant's counsel, examined him and pronounced him sane, and that their testimony as witnesses could not in the least prejudice the defendant, though they were not formally named as experts.

In Louisiana, the Supreme Court on appeal in criminal cases has no jurisdiction over the facts and cannot inquire into the question as to whether or not the defendant was insane, and it is a question solely for the jury; and therefore, the quotations above made have reference only to issues of law presented to the Supreme Court, by proper bills of exceptions during the progress of the trial.

"A person indicted for crime cannot, validly, plead, or be tried, or convicted, or sentenced, while in a state of insanity, although his mental derangement may have only supervened since the date of the crime charged.

"The objection of present insanity may be made at any stage of the proceedings. It requires no special or formal plea, but may be adequately presented orally, or the court may itself suggest and act upon its own observations.

"Whenever and however presented, evidence, if offered, must be received, and the issue must, in some way, be determined.

"As to the mode of determining it, some discretion is left to the judge, according to the time and circumstances under which the objection is made.

"When raised during the progress of the trial, the better course seems to be to submit the special issue, with the general issue, to the jury; but whatever be the judge's discretion on this point it is error to refuse to entertain the objection, or to receive evidence, or to determine it in any way."³³

Subsequent to the conviction of Lyons and the finality of the judgment of the Supreme Court heretofore referred to, his counsel

³²116th Louisiana Reports, 524 (1906).

³³*State v. Reed*, 41st Louisiana Annual Reports, 581 (1889).

applied to the trial court alleging the defendant was then insane, asking for the appointment of a commission to examine into his sanity; but the District Judge refused the motion and also refused an appeal, which action the Supreme Court sustained saying:

"It is obvious that to permit convicts to arrest the execution of sentence imposed on them by demanding, as a matter of legal right, the appointment of medical experts to examine into their mental condition, would be tantamount to granting them the privilege of thwarting the administration of criminal justice for an indefinite time."⁸⁴

So where, before verdict, insanity was not urged, but after conviction, at the instance of accused, a commission of medical experts is appointed to examine and report upon his mental condition, a majority of whom report him of sound mind, and thereafter he makes application for trial by jury of the issue of insanity vel non, the judge may refuse such application, there being no law which imposes on him the ministerial duty of directing a trial of such an issue by a jury. "In such case the allowance of trial by jury must be governed and controlled by the circumstances surrounding, and the situation of the case."⁸⁵

J. Benjamin Chandler was quite a character in the City of New Orleans, for many years; he was a veteran both of the Mexican war and of the war between the states, serving in the latter throughout the Confederate army. On October 7, 1848, he killed a man by the name of Patrick C. Daley, and was indicted for murder, the trial judge giving this remarkable charge to the jury:

"I have rarely known a case in which the crime of murder was more clearly brought home to the prisoner, and I cannot think you can entertain any reasonable doubt of his guilt."

The jury, however, did not agree with the judge, because they found the defendant guilty only of manslaughter; he pleaded self-defense and the judgment was reversed and the case remanded for want of a proper charge as asked for by the defendant as well as for the improper charge above quoted.⁸⁶

In 1892, Chandler was indicted for libel; he had been executor for an estate where I was his attorney, but I withdrew from the case when he filed in the Supreme Court what he called a brief on application for rehearing, it being an attack upon the court, the witnesses and opposite counsel. The particular libel for which he was indicted was against one

⁸⁴*Lyons v. Judge*, 114th Louisiana Reports, 81 (1905).

⁸⁵*Armstrong v. Judge*, 48th Louisiana Annual Reports, 503 (1896).

⁸⁶*State v. Chandler*, 5th Louisiana Annual Reports, 489 (1850).

of the judges of the District Court whom he alleged had entered into a conspiracy to injure him and deprive some of the heirs to the estate of their rights; he also brought a suit against this judge, and thereupon all the judges, five in number, recused themselves and called upon Mr. E. B. Kruttschnitt, then an eminent member of the New Orleans Bar, to try the case, which resulted in the dismissal thereof. In the libel case the defendant did not set up insanity, but the court on the suggestion of the District Attorney, subsequent to the verdict and prior to the sentence, doubts having arisen in his mind as to the sanity of Chandler, thereupon appointed experts and referred the matter to another jury; the Supreme Court held this proceeding proper against the protest of Chandler, who did not want to be considered insane, but during the trial thereof, the Supreme Court held that the defendant should be released on a nominal bond instead of one for ten thousand dollars, exacted by the court. The final result was a most peculiar verdict: "Not guilty, on the grounds of insanity." My recollection is that the defendant died soon after, but whether in prison, or in an insane asylum, or elsewhere, I do not recall.⁸⁷

In the case of *State v. Oteri*,⁸⁸ the court was called upon to construe Acts Nos. 105 of the Legislative Session of Louisiana of 1896, and 264 of 1910, respectively, reading as follows:

"Whenever any convict serving a sentence in the penitentiary shall become insane, it shall be the duty of the warden of the penitentiary together with the clerk of the Board of Control to present a petition to the District Court, where the penitentiary is located, setting forth the insanity of such convict and praying for his interdiction and removal to the asylum for the insane.

"Where a person has been committed to the hospital for the insane, who becomes insane after his conviction for a crime punishable by imprisonment in the penitentiary or by death, he shall not upon regaining his sanity be restored to liberty."

But the court went no further than to say that the law of 1910: "Evidently contemplates that there is some mode by which in the interval between sentence and execution the sanity of a convict may be pronounced; and, in the nature of things, the only court having jurisdiction is that having jurisdiction of the place prescribed by law for the detention of the convict.

"The jurisdiction of the court that tried and sentenced the convict necessarily ceases when the convict by operation of law passes out of its control and under that of the officers of the penitentiary."

With this very imperfect discussion of so important a question

⁸⁷Chandler applying for writs of *habeas corpus*, etc., 45th Louisiana Annual Reports, 696 (1893).

⁸⁸129th Louisiana Reports, 921 (1912).

as I have endeavored feebly to present, I will close with reference to a rather curious case.

In 1855, there was before the Supreme Court the case of *State v. Patten*,⁸⁹ in which appeared the following remarkable proceedings in the District Court:

"On the 20th day of March, 1854, after the evidence on the part of the state was closed, and when the counsel of the prisoner were proceeding to prove, by the evidence of the witness, the insanity of the said prisoner at the time of the killing, set forth in the indictment, and a long time before, and even since the said killing, the said prisoner arose and objected to, and repudiated the said defense, and insisted upon discharging his counsel and submitting his case to the jury without any further evidence or action of his counsel in his defense; his counsel opposed and remonstrated against the prisoner being permitted to do so, alleging that they were prepared to prove the defense by clear and irresistible testimony, but the court overruled the objection of the said counsel and permitted the prisoner to discharge his counsel, and refused to hear them further in his defense, and gave the case to the jury without any further evidence or pleading on his behalf * * *. There was a verdict of 'guilty, without capital punishment,' and after his former counsel had, in the quality of *amici curiae*, attempted to obtain a new trial and an arrest of judgment without success, the prisoner was sentenced to hard labor for life in the penitentiary."

And considering the foregoing which was before the court by bill of exceptions and appeared on the face of the record, the Supreme Court said:

"The sanity or insanity of the prisoner is a matter of fact; the admissibility of evidence to establish his insanity, under the circumstances detailed in the bill of exceptions, is a matter of law, and the only matter which the constitution authorizes this tribunal to decide.

"The case is so extraordinary in its circumstances, that we are left without the aid of precedents.

"In support of the ruling of the district judge, it has been urged that as every man is presumed to be sane until the contrary appears, and that a person on trial for an alleged offense has a constitutional right to discharge his counsel at any moment, to repudiate their action on the spot, and to be heard by himself; hence, the inference is deduced that the judge could not have admitted the evidence against the protest of the prisoner without reversing the ordinary presumption, and presuming insanity.

"In criminal trials, it is important to keep ever in mind the distinction between law and fact, between the functions of a judge and those of a jury.

"It was for the jury and the jury alone to determine whether

⁸⁹10th Louisiana Annual Reports, 299.

there was insanity or not, after hearing the evidence and the instructions of the court as to the principles of law applicable to the case.

"By receiving the proffered evidence for what it might be worth, the judge should decide no question of fact; he would merely have told the jury: 'The law permits you to hear and weigh this evidence; whether it proves anything, it is for you to say.'

"By rejecting it, he deprived the jury of some of the means of arriving at an enlightened conclusion upon a vital point peculiarly within their province, and in effect, decided himself, and without the aid of all the evidence within his reach, that the prisoner was sane * * * If the prisoner was insane at the time of the trial, as counsel offered to prove, he was incompetent to conduct his own defense unaided, to discharge his counsel, or to waive a right * * *. Considering, therefore, that it would be more in accordance with the sound legal principles and with the humane spirit which pervades the criminal law, to allow the rejected testimony to go before the jury, the cause must be remanded for that purpose."

The case went back to the trial court where the verdict again was: "Guilty, without capital punishment."

And on appeal to the Supreme Court, where the defendant was represented by one of the counsel who appeared in the first trial, this judgment was affirmed.⁴⁰

The court said: "There are but two bills of exceptions, and neither of them appear to have been well taken.

"The prisoner pleaded not guilty to an indictment for murder. Upon the issue thus joined, the jury had power to find the prisoner guilty of manslaughter. It was, therefore, pertinent and right for the judge to instruct the jury in the law, both of murder and manslaughter, notwithstanding the defendant's counsel chose to assert that the only issue for the jury to try was the insanity of the accused.

"Nor was there error in refusing to allow the tardy motion for an inquisition of lunacy, it appearing that there was no pretense that the prisoner had become insane since the trial, and the question of his sanity at the time having been fully considered and passed upon by the jury as a question of fact. The verdict of the jury is conclusive upon us as to all matters of fact embraced by it."

The defendant was sentenced to hard labor in the penitentiary for life.

⁴⁰12th Louisiana Annual Reports, 288 (1857).

CRIME AND IMMIGRATION

(Report of Committee of the Institute)¹

KATE HOLLADAY CLAGHORN, Chairman

The report of Committee E consists of a study of a small group of foreign convicts, concerning whom original data have been gathered. This method of approach to the problem was undertaken this year primarily because a member of the committee, Dr. Bernard Glueck, gave us the advantage of original material at his disposition, and of his expert service in handling it. On the other hand, any plan for discussing the problem extensively, through statistics, was felt by a majority of the committee to be unsatisfactory. The statistical material already available is inadequate, affords no common basis for comparison, and the most important collections are now so old that the results have been thrashed over thoroughly to extract all possible grains of information. And the committee has no facilities for making original statistical investigations on any extensive scale.

The material upon which this study is based consists of records of 213 cases of foreign-born prisoners from among 608 studied, out of 683 consecutive admissions to Sing Sing Prison, New York State, during nine months, between August 1, 1916, and April 30, 1917, inclusive.

The information secured consisted of the results of the psychiatric examination of the 213 convicts in the Psychiatric Clinic under Dr. Glueck's direction, at the prison, and of facts about country of birth, age at commitment, nature of offense, type of offender (first offender or recidivist), education, economic status, habits, length of time in the United States, age at arrival, and citizenship.

It was originally planned to supplement the above sources of information through a field investigation, calling for facts about the convict's past life in the fullest detail: Family history, economic vicissitudes, and social environment, to be obtained by questioning the family, friends and acquaintances of each convict studied. But the

¹The membership of this committee is as follows: Miss Kate Claghorn, School of Philanthropy, New York City, Chairman; Robert Ferrari, of the New York City Bar; Gino C. Speranza, of the New York City Bar; Edward A. Ross, University of Wisconsin; Bernard Glueck, M. D., Psychopathic Laboratory, Sing Sing Prison; Raymond B. Fosdick, Social Hygiene Association, N. Y.; Miss Grace Abbott, Immigrants' Protective League, Chicago.

number of schedules we were able to collect with the force at our disposal was too small to be of value. We are therefore aware that while we have been successful, to a considerable degree, in estimating the constitutional factors that may have been responsible for the crime involved in this series of cases, we have been unable to make as thorough a study of the social factors involved as would be desirable. In fact, one of the most important conclusions arrived at, as a result of this study, is a further emphasis of the need of a thorough sociological study of this problem.

In estimating the intelligence in all the foreign-born prisoners studied, the factors of education, the length of residence in the United States, the age at arrival, and the language factor involved in the intelligence scale were taken into consideration. The measuring scale employed by us was the Yerkes-Bridges Point Scale, and, in a considerable number of cases, in addition, the Terman revision of the Binet-Simon Scale and some of the Healy construction tests.

Under the "Unclassified" column were placed all cases in which no evidence of distinct mental defect or deviation could be discovered. Special norms were used in grading these cases, in accordance with the Yerkes-Bridges Scale, that is, they were credited with two years additional to the actual performance.

Tested according to this method, 124 of the 213 foreign convicts, or 52.1% of the total, showed mental defect or deviation.

Two other classes of facts especially significant for the group of foreign convicts taken as a whole are age at commitment and type of offender.

AGE AT COMMITMENT

Taking the foreign group as a whole, the age of commitment ranges between 16 and 64, the most common age being 27. The most frequent age in 1,000 consecutive admissions, irrespective of race, was 24. For the 395 native-born inmates in this series of 608 cases, we find the ages ranging between 16 and 68, the most frequent age being 22. It would appear, therefore, that the average foreigner shows a tendency to get into a state's prison at a later age than does the average native-born, notwithstanding the fact that many of these foreigners came to the United States at a rather early age, the most frequent age of arrival in the 213 cases being 15.

RECIDIVISM

Of more interest is the comparison of the frequency of recidivism between the foreign-born and the native-born. Here we find that

whereas the percentage of recidivism among the native-born of these 608 cases was 75.9%, in the foreign-born it was only 49.8%, or 106 out of 213 cases. Intimate study of the individual foreign-born inmate bears out the contention that in a far greater number of instances one is dealing here with the so-called "accidental offender," adverse social and environmental conditions frequently adding to the chances of committing an offense.

RATIO OF CRIMINALITY AMONG FOREIGN AND NATIVE-BORN

According to an estimate made for us by the Federal Bureau of the Census, the 683 cases admitted to Sing Sing during the period between August 1, 1916, and April 30, 1917, constituted but .029% of the total male population of 16 years of age and over of the counties from which Sing Sing derives its prisoners (683 out of 2,343,087).

Of this total, 1,223,311 were foreign-born whites or 52.21%, whereas they constituted only 35.03% of the total admitted to Sing Sing. The foreign-born therefore not only show much less a tendency to recidivism than do the natives, but they are also much less likely to come in conflict with the law at all.

Coming now to a discussion of the foreign convict according to country of birth, it is found, first, that of the 213 foreigners, 68, or 31.9%, were from Italy; 58, or 27.2%, were from Russia; 25, or 12%, were from Germany; 18, or 8.4%, were from Austria-Hungary. The remaining 44 foreign convicts were scattered among 20 different countries of birth—6 were Irish, 5 from the British West Indies, 4 each from Greece, Canada, and Roumania, 3 from England, 2 each from Cuba, France, Denmark and Holland, and 1 each from ten other countries.

Thus it will be seen that Italy and Russia furnish by far the most significant share of the foreign population in these 213 cases. At the same time, it must not be lost sight of that the Italians and Russians constitute unquestionably the bulk of the foreign population in the Metropolitan district from which the greater proportion of the Sing Sing population is drawn.

Let us see now what can be shown for the different nationality groups. First, the Italians, as the most numerous.

THE ITALIAN GROUP

Practically all of the 68 cases belonging to this group came from Southern Italy, and in 43, or 63.2%, a classification in terms of mental anomalies was possible, as follows:

Dementia Praecox	1
Organic Disease of the Central Nervous System.....	2
Psychopathic	7
Defective	33
	—
Total	43

Of the 33 defectives, 21 showed a degree of intelligence commensurate with the intelligence of the average normal American child of ten years or under, while in no instance did they reach an intelligence beyond that shown by the average normal American child of twelve years of age.

While the percentage of recidivists in the entire group was 22 out of 68, or 32.4%, it was 12 out of 43, or 27.9% of the 43 classified mentally. This rather high percentage of mental deviations, and particularly the very low level of intelligence manifested by these individuals, emphasizes strongly again the necessity of proper procedure in admitting immigrants to the United States.

Dr. Glueck was stationed at Ellis Island during the year 1913, and, according to a study made at that time, the average time allowed for the examination of an immigrant was something like nine seconds. Obviously, it is ridiculous to expect to detect the undesirable immigrant with such a brief period of time allowed for the examination. Be it said to the credit of the United States Public Health Service that considerable progress in this particular phase of its work has been made in the last few years.

SOCIAL FACTORS

Naturalization and Americanization.

It is astounding, indeed, that notwithstanding the fact that the length of sojourn in the United States in these 68 cases varied all the way from one to 36 years, and that 44 out of the 68 have been in the United States ten years or over, the degree of acquirement of of the English language is very insignificant, so much so that in many instances no examination could be carried out without the aid of an interpreter. This, of course, must be explained by the tendency which the Italians manifest to herd together in certain districts where Italian is practically the only medium of expression; but, at the same time, one cannot escape the conviction that had a greater effort been displayed by the various social agencies which come in contact with these groups in time of need, to introduce the English language into these communities, a great deal of anti-social behavior would have been prevented.

Although 60 of the 68 Italians were eligible, by age and length of sojourn in the United States, to citizenship, only four had become naturalized and only eight had signified their intention of becoming citizens. This finding is quite in line with the transitory nature of the Italians' sojourn in the United States. Many of them, although here for many years, leave their families in Italy with the hope that some day they will have accumulated sufficient funds to return and resume their life in an Italian village. Of the 68, 16 were under 14 years of age at the time of emigrating to the United States and could have benefited to a considerable extent from our public school system. Seven of the 68 have been here less than 5 years, and, under the provision embodied in the new Immigration Law recently passed by Congress, could be deported to Italy.

EDUCATION

Of the 68, 25, or 36%, were illiterate. Of the remainder:

- 2 attended school for only a few months.
- 4 attended school for about 1 year.
- 7 attended school for about 2 years.
- 4 attended school for about 3 years.
- 6 attended school for about 4 years.
- 4 attended school for about 5 years.
- 2 attended school for about 6 years.
- 3 attended school for about 7 years.
- 1 attended school for about 8 years.
- 3 attended school for about 9 years.
- 2 attended school for about 10 years.
- 1 attended school for about 13 years.
- 2 graduated from Grammar School.
- 1 graduated from High School.
- 1 no information.

The extremely high percentage of illiteracy and the very meagre education of those who did attend school, undoubtedly accounts, in a measure, for the generally low level of intelligence as disclosed by the intelligence tests.

It is problematical to just what extent the new Immigration Law will tend to eliminate Italians from our prisons, but it cannot be doubted that the higher standard of education which foreign countries like Italy and Russia will have to acquire as a result of this law will affect materially the volume of crime among the foreign population of our large cities. The process of socialization and acquaintance with American customs and ideals will likewise be more assured as a result of this, and one of the desirable consequences of this socialization will eventually be a reduction in the volume of crime.

ECONOMIC STATUS

A detailed and useful estimation of the economic factor involved in the problem which these 68 Italians present would necessitate a much more thorough and dependable field investigation than we were able to carry out. Such facts as were elicited are believed to be reliable, however.

Of the 68, 34, or 50%, were skilled mechanics, 32, or 47%, were unskilled laborers, and in 2 instances no reliable information could be had.

Fifty-three out of the 68, or over 77%, were employed at the time of the commission of the crime, while 12, or 17.6%, were unemployed when arrested. In three instances no reliable information could be had.

HABITS

One hesitates considerably in endeavoring to estimate the factor of alcohol in the crimes of these 68 cases without a thorough social investigation, but those who admitted drinking, or intoxication, at the time of crime, were 6 out of the 68, or less than 1 per cent. Five of the 68 showed an excessive addiction to gambling.

TYPE OF OFFENSES

There is no particular virtue in classifying the offenses for which these convicts were sent to prison in accordance with the legal definition of crime. In fact, there is very little real basis for such classification beyond statutory definition. It would seem more justifiable to base the classification in accordance with the instinct from which the impulse to the act was derived. Thus, most of the crimes as defined by statute could be classified in accordance with several generally accepted primary instincts.

In the Italian group this factor was represented as follows:

Crimes having their impulse in the instinct of pugnacity. (All offenses against the person, exclusive of sex offenses.).....	31
(In four instances the assault led to homicide.)	
Crimes having their impulse in the instinct of sex.....	9
(One of these was the raping of one's own daughter.)	
Crimes having their impulse in an abnormal sex instinct. (Sodomy.)....	4
Crimes having their impulse in the acquisitive instinct.....	24

It is interesting to note the particular forms which the expression of the acquisitive instinct takes in Italians. Of the 24 cases thus classified

Selling of cocaine was resorted to in two instances.
 Compulsory prostitution in two instances.
 Kidnapping in two instances.
 Extortion in one instance.
 Arson in one instance,
 Dynamiting in one instance.

The end in all these types of crime was the same, namely, the gaining of money.

It will be seen, therefore, that crimes against the person other than sex, deriving their impulse from the instinct of pugnacity, which comes into play so strongly in this class on account of a nonstable, nervous make-up and lack of inhibition, constitute the most frequent offense, namely, 45.5% of all offenses. Another significant fact is that four of the sixty-eight, or 5%, were found guilty of sodomy.

To sum up, then, of the 608 cases studied, out of 683 admitted to Sing Sing between August 1, 1916, and April 30, 1917, inclusive, 68, or 11.01%, were Italians, most of whom came from Southern Italy. The level of intelligence of these 68 cases was very low, 21, or 30.8%, of them showing an intelligence under ten years of age, and 25, or 36%, of them being illiterate. Only 4 out of the 60 eligible for citizenship became citizens, and only 8 had declared their intention of becoming citizens. The economic level of these 68 was only fair; 47.1% were unskilled laborers, and the most frequent crime to which they were subject were crimes against the person—45.5%. In 43 cases out of the 68, or 63.2%, a classification in terms of deviation from normal mental health was possible.

THE RUSSIAN GROUP

Of the 213 foreigners, 58, or 27.2%, came from Russia. This constitutes 9.5% of the total 608 studied. In studying this group it must be remembered that it includes persons of diverse racial stocks and social and economic characteristics. One racial group, however, dominates to such an extent that we may regard the results reached as in general characteristic of that group. These are the Hebrews, who made up 40 of the 58 "Russians," or 68.9%.

Proceeding with the analysis with this distinction in mind, we find that of the 58 Russian immigrants, 31, or 53.4%, were classifiable in terms of anomalous mental states, as follows:

Arteriosclerotic deterioration	1
Organic disease of the central nervous system, syphilitic	1
Paranoid state	1
Dementia præcox	1
Psychopathic	6
Intellectually defective	21

Of the defective group, 12 possessed an intelligence equivalent to the intelligence of the average normal American child of ten years, or under, while in no instance did the intelligence reach above twelve years of age of the average American child.

Compared with the Italian group, this group shows a considerably lower percentage of mentally classifiable cases: 53.4% to 63.2%, while at the same time it shows almost double the percentage of recidivism, as follows:

The percentage of recidivism in this group was 60.3% as compared with only 49.8% in the entire group of immigrants, and 32.4% in the Italians. This decidedly high percentage of recidivism in this group, as compared with the Italian group, becomes still further illuminated when we consider the types of offenses manifested in this group. One can hardly escape the conviction that there seems to be a very decided tendency for certain races to show a definite selectiveness in their expression of anti-social tendencies. It would lead one entirely beyond the scope of this report to enter into a detailed discussion of the possible factors of constitutional make-up and environment that may influence this selectiveness. We have seen that in the Italians, crimes which have their impulse in the instinct of pugnacity are the most frequent crimes. It would not be entirely true if one were to attribute this solely to the well-known nervous instability and impulsiveness which is common among the Italians, especially the Southern Italians. It would seem that the low grade of intelligence, and extremely limited degree of education deprives these people of many outlets for the solution of their grievances, which the educated and more intelligent person may have at his disposal, and, in consequence, they show a tendency to settle their difficulties in the crude and most natural way, namely, physical assault. As we shall see below, the most frequent crimes in the Russian group are crimes which have their impulse in the instinct of acquisitiveness. It is well known that the conditions under which the Russian Hebrews are obliged to live in Russia, make their struggle for existence an extremely keen one, and is it not likely that the explanation of the prevalence of this type of crime among them may be looked upon as a compensatory expression of an instinct which found a meagre outlet heretofore?

SOCIAL FACTORS

Naturalization and Americanization.

Of the 58, 48 were eligible for citizenship because of age and length of sojourn in the United States. Of these, 10 had become citizens and 6 had signified their intention of becoming such.

It will be seen, therefore, that compared with the Italian, the Russian shows a more pronounced tendency to permanency of residence in the United States and to Americanization. Of the 58, 31 were under 16 years of age at the time of arrival in the United States. The length of sojourn in the United States, at the time of admission to Sing Sing, ranged all of the way from less than one year to thirty-five years. Thirteen of the convicts have been here less than five years and come under the provision of the new Immigration Law for the deportation of criminals.

EDUCATION

Of the 58 cases, 14, or 24.1%, were illiterate, as compared with 36% illiterate in the Italians. Of those who attended school

2 could read and write.
 2 attended school for 1 year.
 9 attended school for 2 years.
 1 attended school for 3 years.
 7 attended school for 4 years.
 4 attended school for 5 years.
 6 attended school for 6 years.
 3 attended school for 7 years.
 4 attended school for 8 years.
 2 attended school for 9 years.
 1 attended school for 10 years.
 1 attended school for 12 years.
 2 graduated from Grammar School.

ECONOMIC STATUS

Skilled	33	Employed at time of crime.....	27
Unskilled	21	Unemployed at time of crime...	27
No information	4	No information	4
.....	—		—
Total	58	Total	58

HABITS

Here, too, one doubts the justifiability in even touching on this factor, since we do not feel that our field investigations were sufficiently thorough or complete, but in 7 instances, out of the 58, drinking or a state of intoxication at the time of the crime was brought to light. It is significant that in 4 out of these 7 cases the crimes were either sex or assault. On the other hand, gambling to an unusual degree was manifested as a pernicious habit in 10 cases out of the 58. In 9 instances the offenses in these cases has acquisitiveness as its motive. It is not at all unlikely that these pernicious habits lead in some instances to a criminal career of an acquisitive type.

TYPE OF OFFENSES

Crimes having their impulse in the instinct of acquisitiveness.....	44
Crimes having their impulse in the instinct of pugnacity.....	11
Crimes having their impulse in the instinct of sex.....	3

Thus it will be seen that in 75.8% of the cases, the crime had as its goal acquisitiveness, the means employed in most instances being the ordinary crimes of burglary, grand larceny (in the form of pocket picking, chiefly), and robbery. In two instances the form of offense was compulsory prostitution. Two of the six crimes were cases of bigamy.

Compulsory prostitution was resorted to in two instances.
Bigamy was a sex offense in two instances.

To summarize, we find that of the 213 cases of foreigners, 27.2% come from Russia, 68.9% of whom are Jewish faith; the entire group constituting 9.5% of the 608 studied. The level of intelligence of these 58 cases was somewhat higher than the intelligence of the Italian group. At the same time the percentage of recidivism was almost double that exhibited by the Italians. The predominating type of offense was of an acquisitive nature, and gambling was a rather frequent habituation. The tendency to become permanently Americanized and naturalized as citizens was considerably higher than in the Italian group. The percentage of illiteracy was considerably lower, and in 53.4% of the cases, as against 63.2% of the Italians, a classification in terms of deviations from normal mentality was possible. With the increase in the percentage of recidivism there also went a more or less corresponding increase in the percentage of unemployment and idleness.

THE GERMAN GROUP

Of the 213 foreign cases, 25, or 4.1% were immigrants from Germany, and of the 25 Germans, only 8, or 32%, were classifiable in terms of deviation from normal mentality, as follows:

Psychopathic	3
Alcoholic deterioration	2
Dementia præcox	1
Organic disease of the central nervous system.....	1
Defective	1

On the other hand, recidivism was shown in 68% of the cases; 17 out of 25. It is also significant in this group that with the large percentage of recidivism, the education of the group was considerably higher as compared with the rest of the immigrant population.

SOCIAL FACTORS

Naturalization and Americanization.

Of the 18 out of the 25 who were eligible for citizenship, 7 had become naturalized and 1 had declared his intention of becoming a citizen. Only two were under 16 years of age on arrival here. The length of sojourn of the 25 was between 2 and 28 years; 12 had resided in the United States 10 years or more, and 4 had resided in the United States less than 5 years and are deportable under the new Immigration Law.

EDUCATION

Out of the 25

- 1 attended school for 7 years.
- 9 attended school for 8 years.
- 1 attended school for 10 years.
- 1 attended school for 12 years.
- 6 graduated from Grammar School.
- 7 attended High School.

ECONOMIC STATUS

Skilled	21	Employed at time of crime.....	13
Unskilled	4	Unemployed at time of crime.....	12

HABITS

Four out of the 25 were drinking or in an intoxicated state at the time of the commission of the crime.

TYPE OF OFFENSES

Crimes having their impulse in the instinct of acquisitiveness.....	20
Crimes having their impulse in the instinct of pugnacity.....	4
Crimes having their impulse in the instinct of sex.....	1

Thus, briefly summarized, this group, which made up 4.1% of the foreign convicts studied, showed the highest level of education, the lowest percentage of psychopathologically classifiable cases, and, at the same time, the highest percentage of recidivism of all the immigrant groups. Like the Russian group, whose intelligence was considerably higher than that of the Italian group, the Germans showed a predominant tendency to crimes of an acquisitive nature.

THE AUSTRIAN GROUP

Of the 18 Austrians, who constituted 2.9% of the total 608 cases studied and 8.1% of the 213 immigrants, 13 were classifiable in terms of deviations from normal average mentality, or 72.3%, as follows:

Dementia præcox	4
Psychopathic	2
Intellectually defective	7

Of the 7 defectives, 4 showed a mental age of under 10 years, while none reached beyond the age of 12. One was a case of imbecility, showing a mentality equivalent to the mentality of an average American child of 6 10/12 years. Thus far this group shows the highest percentage of mental deviations, and 22.2% of distinct mental disease. Ten of the 18 were recidivists, or 55.5%.

SOCIAL FACTORS

Naturalization and Americanization

Of the 16 cases eligible, by reason of age and length of sojourn in the United States, for citizenship, 3 were naturalized and 5 had declared their intention of becoming citizens. Six were under 16 years of age on arrival in the United States. The length of sojourn in the United States was between 3 and 26 years. In 5 instances the length of sojourn was under 5 years, and these would have come within the provisions of the new Immigration Law.

EDUCATION

Out of the eighteen

- 2 were illiterate.
- 2 attended school for 1 year.
- 2 attended school for 3 years.
- 4 attended school for 4 years.
- 1 attended school for 6 years.
- 1 attended school for 7 years.
- 3 attended school for 8 years.
- 1 graduated from Grammar School.
- 2 graduated from High School.

ECONOMIC STATUS

Skilled	10	Employed at time of crime.....	12
Unskilled	8	Unemployed at time of crime.....	6

TYPE OF OFFENSES

Crimes having their impulse in the instinct of acquisitiveness.....	13
Crimes having their impulse in the instinct of pugnacity.....	2
Crimes having their impulse in the instinct of sex.....	2
Abandonment	1

This group, which only comprises 18 individuals, is made up of a number of races and no general conclusions concerning it are justifiable.

THE MISCELLANEOUS GROUP

Of the remaining 44 cases, no single nationality is represented by a sufficiently large number to justify a separate consideration. Of the

44 cases, 29, or 68.1%, were classifiable in terms of deviations from normal mentality, as follows:

Dementia præcox	3
Arteriosclerotic deterioration.....	1
Organic disease of the central nervous system (syphilitic)	3
Alcoholic Deterioration:	
Ireland	2
Canada	1
France	1
	— 4
Psychopathic	6
Defective	12

SOCIAL FACTORS

Naturalization and Americanization

Of the 36 cases eligible for citizenship, 13 have become citizens and 2 had signified their intention of becoming citizens. Nineteen arrived in the United States under 16 years of age and the length of residence has been between 1 and 44 years. Twenty-six have been in the United States 10 years or over. Six have been in the United States less than 5 years and are deportable under the new Immigration Law.

Of the 44 cases, 22, or 50%, were recidivists, and 22, or 50%, were first offenders.

EDUCATION

Of the 44

4 were illiterate.
1 could read and write.
1 attended school less than 1 year.
2 attended school for 1 year.
2 attended school for 2 years.
4 attended school for 3 years.
2 attended school for 4 years.
3 attended school for 5 years.
2 attended school for 6 years.
1 attended school for 7 years.
6 attended school for 8 years.
5 attended school for 9 years.
1 attended school for 10 years.
1 attended school for 12 years.
1 attended school for 13 years.
4 graduated from Grammar School.
3 graduated from High School.

The percentage of illiteracy in the group was 9%.

ECONOMIC STATUS

Skilled	23	Employed at time of crime.....	25
Unskilled	21	Unemployed at time of crime....	19

TYPE OF OFFENSES

Crimes having their impulse in the instinct of acquisitiveness.....	26
Crimes having their impulse in the instinct of pugnacity.....	9
Crimes having their impulse in the instinct of sex—	
Rape	3
Sodomy	1
Incest	1
Abduction	1
Bigamy	1
	— 7
Abandonment of children.....	2

Owing to the very small number of individuals representing any given nationality, no general conclusions are justifiable.

GENERAL CONCLUSIONS

The conclusions which one might be justified in drawing from a study of the immigrant population among 608 cases of adult male felons out of 683 admissions to Sing Sing Prison between August 1, 1916, and April 30, 1917, inclusive, are as follows:

1. Out of the 608 cases, 213, or 35%, were foreign-born, 11.01% of the total number coming from Italy and 9.5% from Russia.
2. Of the 213 cases, 124, or 58.2%, were classifiable in terms of deviation from average normal mentality. This point becomes especially significant when one remembers that the majority of these cases belonged in classes excluded by law, at the time of their arrival in the United States, and makes urgent a demand for facilities at immigration stations to make an adequate mental examination before the emigrant is admitted.
3. The native-born seem to have a greater tendency to come into conflict with the law than do the foreign-born, and they show a much higher percentage of recidivism than the foreigners.
4. This study would indicate that the immigrants showing a higher level of intelligence, likewise show a predominant tendency to crimes of an acquisitive nature, while those whose intelligence is on a lower level were most frequently guilty of crimes against the person and sex crimes.
5. Under the new Immigration Law, 44 of the 213 would have been excluded on account of illiteracy and 35 were deportable for coming in conflict with the law within five years after arrival in the United States.
6. Only a very slight tendency was manifested to naturalization. Out of 178 eligible for citizenship, or 83.5% of the entire group, only

27, or 12.6%, had become naturalized and 22, or 10.3%, had declared their intention of becoming citizens.

7. Bearing in mind that the members in the different race groups are so small to warrant absolutely accurate conclusions, significant correlations between recidivism and other factors are shown. Recidivism is often taken as a measure of the seriousness of the criminal problem, and we see from this study that of the native-born convicts in the whole group studied, 75.9% were recidivists, while of the foreign-born only 49.8% were recidivists.

From further analysis of the figures we see, however, that recidivism is associated with specific kinds of crime in such a way as to leave doubts as to whether it may be taken wholly as a measure of depth or gravity of criminality. Taking the four racial groups studied in detail, it is found that as the percentage of recidivism increases, the percentage of acquisitive crimes out of the total crimes committed by the racial group increases.

This seems to indicate that the Italians who commit the largest proportion of passion crimes, are the least prone to recidivism partly because crimes of violence generally (as shown by our Federal statistics, at least) are punishable by longer sentences. Crimes against property, being less severely punished, afford the criminal more of an opportunity to repeat his offense. This does not controvert the idea advanced in the beginning of this report that the foreigner is a more "accidental" offender, in that he is not so prone to recidivism as the native-born, but it does show that the seriousness of his crimes is not altogether measured in terms of recidivism.

Further light is thrown by correlations between recidivism and unemployment. Again taking the four groups in order, it is found that as recidivism increases the percentage of unemployed at time of committing the crime increases. This may be interpreted as indicating the evil effects of being out of a job. Taken in connection with the correlation with type of crime and others to be noted in a moment, however, it admits of the opposite interpretation—that the tendency to recidivism causes the lack of employment. In other words, the recidivist is not really "unemployed"; he is carrying on crime as a business for gain. Another correlation tends to substantiate this. At first sight there appears to be no correlation between mental defect and recidivism. But leaving out cases of mental aberration (the abnormal) and taking only those classified as of defective mentality (the subnormal) a perfect inverse correlation with recidivism is shown. In other words, the gainful criminal needs intelligence in his business and this is further

shown by an almost complete inverse correlation between illiteracy and recidivism. That is to say a man may have mental disease and yet have sufficient intelligence to carry out plans; the man who is mentally defective is to that extent less able to do so.

These considerations may help in solving a difficulty which comes up in the study of such a group as the Germans, for example, through which one might be tempted to doubt the factor of illiteracy and lack of culture, as well as the factor of mental deviations as influencing the volume of crime. This group of 25, which shows on the one hand the lowest percentage of psychopathologically classifiable cases, and on the other hand represents perhaps the highest culture of any group, shows at the same time the highest percentage of recidivism of all the foreigners.

The general conclusion to be drawn would seem to be that lack of mental endowment and equipment are found associated with crimes of passion and that these are found exemplified most completely in the Italians of any of the groups studied; that we find an increasing amount of mental endowment and equipment with an increasing percentage of gainful crimes exemplified most completely in the Germans.

Finally, one feels that this study further emphasizes the great need of more thorough investigation of the problem of crime among the immigrant population, especially of the social and environmental phases involved.

Such field investigations as were made, although too few in number and too incomplete to present here, afforded most suggestive glimpses of influences at work upon the criminal that are not shown at all in such statistics as we can gather, and the committee feels that results of great value could be gained if an investigation of the type planned by it could be carried out more completely.

Appended are tables giving in statistical form the facts presented in this report:

TABLE I.
COUNTRY OF BIRTH OF OFFENDERS

Country.	No.	Per cent.
Italy—(Practically all came from Southern Italy)...	68	31.9
Russia—(40 of whom are Russian Hebrews).....	58	27.2
Germany	25	11.7
Austria-Hungary	18	8.4
Ireland	6	2.8
British West Indies.....	5	2.3
Greece	4	1.9

Canada	4	1.9
Roumania	4	1.9
England	3	1.4
Cuba	2	.9
France	2	.9
Denmark	2	.9
Holland	2	.9
Mexico	1	.5
Porto Rico	1	.5
Brazil	1	.5
Scotland	1	.5
Turkey	1	.5
Switzerland	1	.5
Norway	1	.5
Sweden	1	.5
China	1	.5
Finland	1	.5
	<hr/> 213	<hr/> 100.0

TABLE II.
PSYCHOPATHOLOGICAL CLASSIFICATION

	Italy	Russia	Germany	Austria- Hungary	Misc.	Total
Dementia præcox	1	1	1	4	3	10
Organic disease of the central nervous system	2	1	1	..	3	7
Psychopathic	7	6	3	2	6	24
Defective	33	21	1	7	12	74
Arteriosclerotic deterioration. ..	..	1	..	..	1	2
Paranoid state .....	..	1	..	..	..	1
Alcoholic deterioration .....	..	..	2	..	4	6
Unclassified	25	27	17	5	15	89
	<hr/> 68	<hr/> 58	<hr/> 25	<hr/> 18	<hr/> 44	<hr/> 213

TABLE III.
TYPE OF OFFENSES

	Italy	Russia	Germany	Austria- Hungary	Misc.	Total
Pugnacity	31	11	4	2	9	57
Sex	9	3	1	2	7	22
Abnormal sex	4	..	..	..	..	4
Acquisitiveness	24	44	20	13	26	127
Abandonment .....	..	..	..	1	2	3
	<hr/> 68	<hr/> 58	<hr/> 25	<hr/> 18	<hr/> 44	<hr/> 213

TABLE IV.

TYPE OF OFFENDERS

	Italy		Russia		Germany		Austria-Hungary		Misc.		Total	
	Per		Per		Per		Per		Per		Per	
	No.	Cent	No.	Cent	No.	Cent	No.	Cent	No.	Cent	No.	Cent
First offenders.	46	67.6	23	39.7	8	32.0	8	44.4	22	50.0	107	50.2
Recidivists	22	32.4	35	60.3	17	68.0	10	55.6	22	50.0	106	49.8
	<hr/>		<hr/>		<hr/>		<hr/>		<hr/>		<hr/>	
	68		58		25		18		44		213	

TABLE V.

COMPARISON BETWEEN FOREIGN AND NATIVE-BORN

	Foreign		Native		Total	
	Per		Per		Per	
	No.	Cent	No.	Cent	No.	Cent
First offenders	107	50.2	95	24.1	202	33.3
Recidivists	106	49.8	300	75.9	406	66.7
	<hr/>		<hr/>		<hr/>	
	213		395		608	

TABLE VI.

EDUCATION

	Italy	Russia	Germany	Austria-Hungary	Misc.	Total
Illiterates	25	14	..	2	4	45
Can read and write. . . . .	..	2	..	..	1	3
School for only few months..	2	..	..	..	1	3
About 1 year.	4	2	..	2	2	10
2 years	7	9	..	..	3	19
3 years	4	1	..	2	4	11
4 years	6	7	..	4	2	19
5 years	4	4	..	..	3	11
6 years	2	6	..	1	2	11
7 years	3	3	1	1	1	9
8 years	1	4	9	3	6	23
9 years	3	2	..	..	5	10
10 years	2	1	1	..	1	5
12 years . . . . .	..	1	1	..	1	3
13 years	1	..	..	..	1	2
Grad. Grammar School.	2	2	6	1	4	15
Grad. High School.	1	..	7	2	3	13
No information	1	..	..	..	..	1
	<hr/>					
	68	58	25	18	44	213

TABLE VII.
ECONOMIC STATUS

	Italy	Russia	Germany	Austria- Hungary	Misc.	Total
Skilled mechanics	34	33	21	10	23	121
Unskilled mechanics	32	21	4	8	21	86
No information	2	4	..	..	..	6
Employed at time of crime...	53	27	13	12	25	130
Unemployed at time of crime.	12	27	12	6	19	76
No information	3	4	..	..	..	7

TABLE VIII.
NATURALIZATION AND AMERICANIZATION

	Italy	Russia	Germany	Austria- Hungary	Misc.
Years in U. S.	1-36	1-35	2-28	3-26	1-44
In U. S. 10 years or more.....	44	..	12	..	26
In U. S. 5 years or less.....	7	13	4	5	6
Under 16 on arrival.....	..	31	2	6	19
Under 14 on arrival.....	16	..	..	..	..
Eligible for citizenship.....	60	48	18	16	36
Became citizens	4	10	7	3	13
Signified intentions of becoming citizens	8	6	1	5	2

TABLE IX.
RECIDIVISM RELATED TO NATURE OF OFFENSE AND INTELLIGENCE

Country of birth	Recidivist	Committing gainful crimes	Unemployed at time of offense	Showing mental deviation and defect (all kinds)	Showing mental deficiency only	Illiterate
	Per cent	Per cent	Per cent	Per cent	Per cent	Per cent
Italy	32.4	35.0	17.6	63.0	48.0	36.0
Austria-Hungary ..	55.6	72.0	33.0	72.3	39.0	11.0
Russia	60.3	75.0	46.0	53.4	36.0	24.0
Germany	68.0	80.0	48.0	32.0	4.0	0.0

PROBATION AND SUSPENDED SENTENCE

(Report of Committee "B" of the Institute).

HERBERT C. PARSONS, *Chairman*.¹

It is the purpose of this report to present the main results of a survey of the statutes of all the states of our country as to their provisions for probation of offenders and suspended sentence, to extract from them their salient features, as well as their limitations, and to offer suggestions as to the ways in which, in the light of accumulating experience, they may wisely be broadened and perfected. The theory of probation as a process of reformation has been so fully and ably presented in prior reports and in public discussion that it may be regarded, not only as familiar, but as approved in the minds of those officially or professionally concerned in the administration of the criminal law, and to a degree—although it must be admitted still incompletely—in the mind of the general public. Such reference as will be made to the history of the development is resorted to solely for the purpose of showing the readiness with which the theory has been accepted, and to depict the institution as a living and luminous fact in our present advanced jurisprudence.

There has come to be written across the face of the criminal laws of practically every state in the Union the expression of a determination that the violator of the code shall be given an opportunity for rehabilitation. That design finds its outlet in the word "probation." That the word itself is graphic and precise may be concluded from the

¹The membership of this committee is as follows:

Herbert C. Parsons, Chairman, Secretary Massachusetts Commission on Probation, Boston.

Arthur W. Towne, Society for Prevention of Cruelty to Children, Brooklyn.

Wilfred Bolster, Municipal Court, Boston.

Charles A. DeCourcy, Supreme Judicial Court, Boston.

Homer Folks, Yonkers, N. Y.

Edwin Mulready, State Commissioner of Labor, Boston.

Robert J. Wilkin, Juvenile Court, Milwaukee.

John W. Houston, Chief Probation Officer, Chicago.

James A. Webb, Superior Court, New Haven.

E. Z. Hackney, Probation Officer, Court of Quarter Sessions, Philadelphia.

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fact that in no statute yet written has it been found necessary to make a definition. It was seized from the language, not so much of common use, as of that made somewhat familiar in the field of theology. In those precincts it is not modern. In the burial ground of the Pilgrims at Plymouth a tombstone bears this inscription:

In memory of Frederick, son of Mr. Thomas Jackson and Mrs. Lucy, his wife, who died March 15, 1778, aged 1 year and 5 days.

O! happy Probationer! accepted without being exercised, it was thy Peculiar privilege not to feel the slightest of those Evils, which oppress thy surviving kindred.

In passing, it may be noted that this demise occurred precisely a century before the first probation law came to relieve "surviving kindred" of certain of "those Evils" which "oppressed" intervening generations.

A devout people, at least a people made familiar with the controversies of ecclesiastics, had sufficient grasp upon the meaning of the word probation to appreciate fully its meaning when, in the now historic act of the Massachusetts legislature of 1878, it found its way into the criminal law. For its purpose there we may turn to the interpretation by the courts, perhaps nowhere more definite than in the phrase in *Marks v. Wentworth*, 199 Mass. 44: "Probation looks to reformation and not to a final goal of punishment." That its purpose is correctional, and that it belongs within the field of criminal procedure, is indicated by the language found in another Massachusetts decision, regarded in that Commonwealth as the leading case, *Commonwealth v. McGovern*, 183 Mass. 238: "The placing of persons convicted of crime in the custody and care of a probation officer is a part of our penal system."

It was reserved to the century into which we have advanced but a few years to make this word a common and distinct feature of the criminal law. Originally used in Massachusetts for its capital city alone, and extended by the act of 1881 to the option of any municipality, and by the act of 1891 turned from a municipal to a judicial control, the present century opened with but four states using it as to adult offenders. Meanwhile it had gained recognition as to juveniles by the pioneer juvenile court act of Illinois in 1899 and by that of one other state, Minnesota. With only these six states recognizing the word and what it implied, the advance from 1900 during the immediately following years broadened to the continent. It is actually missing recognition in but a single state of our nation today.

It is important to note that the hope of reformation in offenders,

as expressed in the law, is of much more ancient origin. As to juveniles it at least dates back to the first reformatory, established in 1848, which was an industrial school for boys, followed by the similar institution for girls, the reformatory for women, and then for men. But this earlier movement was based on the belief that reform was an institutional undertaking. Probation came as a protest against that notion and as an assertion that the moment to undertake the restoration to right conduct by an upbuilding process is the precise instant when the offender comes within the cognizance and control of the court. It is that vital feature which signalizes this development, and now demands a consideration of how far it has justified itself, and how much of light there is in the hope for its much more complete recognition in our country.

STATUTORY LIMITATIONS OF PROBATION

Caution has marked the adoption of probation. Let us examine the limitations that run through the American statutes. The first of these is as to age. Juvenile probation has been, in the majority of states, the first recognition, and it remains the only one in apparently eighteen of them. The theory of human salvage is denied its full expression in these states, except as to those persons who are presumably in a plastic, because a youthful, period. It is no longer necessary to plead for juvenile probation. The field for inquiry and examination of results is that of adult probation. Certain limitations of juvenile probation, plentifully found in our laws, are indeed open to discussion, such as its confinement to populous sections and to first offences; the dependence upon unpaid officers; the acceptance of the police as a substitute for distinctly reform officers; the continued linking of supervision to the prison systems; and other restraints of a minor but by no means negligible kind. The misfortune of these restrictions and denials will, however, be sufficiently apparent in connection with our study of the features of adult probation laws.

The statutes now available in published form, bringing the revision up to include acts of the year 1916 and in some instances those of 1917, seem to show twenty-four states in which there is provision of some sort in the general statutes for adult probation. To these must be added five states in which it appears to have been provided for cities or districts by special acts. Thus we have a total of twenty-nine adult probation states. These may be classified as to the requirement or availability of probation as follows:

State in which a salaried probation officer is present in every court	1
States in which the entire territory is provided with probation service by statute, but not necessarily in every court or not in all cases with a paid officer.....	4
States in which a probation officer may be had when a local governmental board requests or provides for.....	4
States in which a probation officer may be appointed in any court when the court so chooses.....	7
States in which probation officers are required in civil districts with a prescribed population.....	5
State in which probation is provided for a special class of cases, for instance, desertion and non-support, but no probation officers required	1
States in which supervision of probation cases under suspension of sentence is placed in prison authorities.....	2
States in which provision has been made for cities or districts by special acts and not by general statutes.....	5
Total	29

A certain highly qualified recognition of the principle may be noted in two other states—in one of which release by the court on suspended sentence is permitted, without the use of the words “on probation,” and without any prescribed supervision; and one in which sentence may be suspended by the governor “in the exercise of executive clemency” with no provision for supervision.

METHODS OF APPOINTMENT

Satisfaction may be taken in the conspicuous fact that the probation officers are as a rule appointed by the courts. When it is taken into account that the first state law provided for municipal probation officers, it is a supreme fortune that it was returned to the judiciary where it obviously belongs, and that the exceptions are few where appointments are made from the political field. In one of these the appointment is unqualifiedly in the governor. In another it is in the governor on recommendation from the court. In another it is by the state board of charities, which names a state probation officer and controls the provision for deputies for certain courts. In another, appointments are by the state commission on charity and probation. These four comprise the list of those where appointment is withheld from the court.

There is, however, a more general subjection of this feature of judicial administration to political restraint in the rather widespread

restriction of salaries to approval by civil officers. Of the states provided by general law with probation officers for adults, in only four do the courts appear to have entire control of probation salaries. In five others their control is within salaries named in the statutes. In three instances the statute definitely fixes the salary. The larger group is made up of those states where the salaries are established by municipal or county governments, five in number, and those in which the salaries named by the court are subject to approval by the civil authorities, six in number, with an additional one where they are fixed by a state board, a total of twelve. It might be expected that the control of salary by a politically chosen board would operate to a control of the system itself, to a measure as to its personnel and to a larger degree as to its extension and support. That expectation is fully borne out by the experience of the states in which this method prevails. Precisely the same wisdom which divorces the judiciary from politics as far as possible in the selection of judges, and which has kept the probation appointment within the control of the court, should free the service from any financial restraints which may be extended to control of the service itself. If the example of those states which fully trust the courts to fix prudent salaries cannot safely be followed, at least the case is clear for such statute provision as to salaries as will remove the question from local or political control.

TERRITORIAL LIMITATIONS

Another limitation characteristic of probation legislation in a very general way is that which limits it to populous sections. Running through the statutes are provisions such as that counties of a certain population may or shall have probation officers, and that the larger counties may have paid probation officers while the smaller ones must depend upon an unpaid service. The practical effect of these lines in the statutes is that probation is granted for urban but not for rural districts. In some instances, the required population is so high that it positively, and perhaps by intent, is limited to metropolitan bounds. If the merit of probation be admitted and if it is warrantable to undertake the saving of the offender by this method, it is obviously imprudent, unfair and unjust, to exclude him from its aid whose offence happens to be committed in a region of comparatively sparse population.

RESTRICTION ACCORDING TO OFFENSE

The limitation which most frequently gets under heated discussion is that as to the offence. So far as the statutes indicate, by far the larger number of states present no limitations as to the nature of

the offence in the use of probation, but at least six states, including some of those with the largest populations, confine its use to first offences, with such requirements as that there shall be no previous criminal record, or that there shall not have been previous imprisonment for crime. One state denies it to persons who have previously been convicted of a felony and further to one who is now convicted of a felony punishable by imprisonment for more than ten years. Certain of the states not only require that it shall be the first conviction but that it shall not be for certain crimes of an extreme nature. The group of states which mention in their statutes certain offences, conviction of which works a denial of probation, include such crimes as: murder, burglary in the first degree, or burglary of an inhabited house, arson, robbery, rape, carnal knowledge of a female child under ten years of age, assault with intent to rape, while in others murder and treason are the only barred offences. Michigan furnishes an exemplary instance of progress from such limitation. Under its act of 1903, as amended by acts of 1905 (Act 32), a convict could only be put on probation who had "never before been convicted of a felony other than simple larceny." Its revision of 1913 broadened the qualification for probation to the familiar language: "where it appears to the satisfaction of the court that the defendant is not likely again to engage in an offensive or criminal course of conduct and that the public good does not require that the defendant shall suffer the penalty imposed by law"; and in this revision only made exception of murder and treason.

Thus we have the approval of the preponderance of states of the theory that with probation in view, the court properly goes beyond the consideration of the offence to consider the possibilities of the offender as a member of the community. So their statutes read and so their practice proceeds.

In any argument for unrestricted probation, within the discretion of the court, it is, of course, to be assumed that the courts in the use of this instrument proceed discreetly and with all the deference that is due to public sentiment as it may exist in their jurisdiction. The experience of the states where probation has been given its longest and most thorough trial goes to lessen the distinction between first and second offences; between misdemeanors and felonies; between minor and aggravated crimes. Cases could be cited from recent records of the placing on probation of persons convicted of even capital crimes. The testimony of probation officers could be brought to substantiate beyond question the fact that the largest percentage of rescue

and return to law-abiding life is supplied by those probationers whose offences were of the kind ordinarily visited with the severer penalties.

PROBATION FOR FIRST OFFENDERS ONLY

The case against the limitation of probation to first offences is strong, if not indeed conclusive. Both logic and experience go to demolish the notion that the possibility or fair prospect of reform is limited to those making their first appearance in court. The records of experienced probation officers are replete with instances where repeated and mistaken treatment of an offender in the form of penalties including imprisonment, has come to a real correction by the use of probation. Logically it is as little justified in correction as in medicine to say that the best and most helpful treatment must not be applied if a person has before been under some other form of attempted remedy which has failed to bring recovery. The most casual observer of cases in criminal courts knows that the event of appearance in court may be, in one instance, the first symptom of a criminal tendency, and, in another, the fruition of a long sequence of wrong deeds which happen to have escaped detection or arrest. We have noted that this limitation appears in the probation laws for adults in several states, and if we turn to the juvenile laws the extent of what seems a glaring error would be found much greater.

METHODS OF APPOINTMENT

Another questionable conception of the place and purpose of probation in our correctional system appears in the provisions as to the selection of probation officers. Repeatedly in the statutes will be found the arrangement that the probation duty shall be performed by police officers. In certain states the sheriff of the county is given the probation task. In others the police may be called to this duty. We even find the service rigidly held within police lines by the positive requirement that police officers shall be designated as probation officers, no others being eligible. Against these provisions of law it is gratifying to place in contrast the exclusion by statute, in the states where as a rule probation has reached its best development, of any combination of the offices of probation and police. The typical phrase in the acts of these states is, "Probation officers shall not be active members of the regular police force, but so far as necessary in the performance of their official duties shall have all the powers of police officers."² Cooperation between the police and probation forces is, of course, desirable if not essential to the success of the task of either. Some statutes definitely require it but these are found in states where official separation is made positive. The police attitude is not the probation attitude,

and it must be regarded as a survival of the historic idea that the courts exist only to punish that the services of the police are requisitioned for this new and wholly reconstructive business.

Three states, at least, have provided that appointments of probation officers shall be after competitive examination in order to arrive at fitness. The State Probation Commission of New York in its reports gives unqualified approval to the use of the merit system in the selection of officers. In other quarters the question is raised whether a position calling for qualities of heart quite as much as of head can be as well filled through any test as by entire freedom of selection by the judge with whom the officer is to be on terms of confidence and personal responsibility. In this view, the acquirement of any tenure of office other than the pleasure of the court would mar the effectiveness of the service. There is to be urged, however, the necessity of securing efficiency for an exacting duty and there can be no reasonable denial of the value of special training.

USES OF PROBATION OFFICER.

We come now to the uses that are to be made of the probation officer. The variance that is marked in the statutes is very great in the matter of preliminary investigations. Several states display the theory that the probation officer should be subject to the call of the court for inquiry into such cases as seem to the court to need special investigation. The contrast to this idea is found in the requirement, none too common in the law, that "each probation officer shall inquire into the nature of every criminal case brought before the court under the appointment of which he acts."² The value of prior investigation into the social facts as to the offender cannot be questioned. It is the cornerstone of probation. Can it be thought that the time of the appearance in the court room is the most favorable one for determining whether these facts should be ascertained as to the person whose case is under consideration? Is the judge, in the midst of his occupation with the often rapid disposal of cases, in the best position to select those for the probation officer's inquiry? It is both conceivable and, on the testimony of experienced officers, actual, that it is often the case which offers no particular evidence of a need for social investigation which, in fact, most emphatically needs it. Hence the conclusion that nothing short of inquiry into all cases fulfills the ideal of probation, and that the service will not approach its possible practical value where inquiry is restricted to cases under any process of selection.

²Mass. R. L., Chap. 217, Sec. 83.

³Mass. R. L., Chap. 217, Sec. 84.

Rather rare in the laws is the provision that the probation officer may recommend to the court whether or not a convicted person shall be put on probation. Doubtless the use of that function is much more general than the laws reflect. Certainly we are not reaching the culmination of the plan when the probation officer is any less than a free advisor of the court as to the disposition of cases. He cannot in any degree be a party to the determination of guilt, but from the moment that this is ascertained he needs to come into the closest contact with the court, not only fully displaying the facts he has gathered, but with a freedom of counsel limited only by the respect due the magistrate, upon whom the final responsibility rests.

RESTRAINTS UPON THE OPERATION OF PROBATION.

The caution with which the states have established probation, the limitations and restraints the statutes have thrown around it, offer no cause for amazement. It is a distinct, perhaps we should say, a fundamental variation from the theory of the state's duty toward the offender. It runs counter to the great weight of judicial opinion and interpretation. The well settled theory was that the duty of the court after the determination of guilt was to impose sentence summarily within the limits of discretion allowed by the code. The right to suspend sentence or the execution of it has been denied in decisions almost without number. There are indications of the changing state of the public mind in the reversals by courts, of opinions which have been firmly held through the course of years. New York furnishes an example of such a reversal in 1894 of the decision of only the year before, which in turn was consistent with all that had been determined in prior opinion. But so late as 1912 the supreme court of an eastern state was able to say:

"It is a well recognized principle that after a sentence has been imposed the court has no authority to relieve the convict from its execution. The authorities draw a clear distinction between the suspension of the imposition of a sentence and the indefinite suspension or remission of its enforcement. There is a conflict of authority as to the power of the court after the conviction to indefinitely postpone the imposition of the punishment therefor prescribed by law, but however the courts may differ as to such power, it is well established that the court cannot, after the judgment in a criminal case is rendered and the sentence pronounced, indefinitely postpone the execution of that sentence, or commute the punishment and release the prisoner therefrom in whole or in part. * * * The act which the authorities hold that the court has not the power to do, is * * * the act done

for the purpose of exonerating the convict in whole or in part from the final and lawful judgment and sentence of the law which has been imposed upon him. That is the power of pardon, to commute penalties, to relieve from the sentence of the law, imposed as punishment for offences against the state, which power has not been given to the courts but confided exclusively to the Governor of the State, with the advice and consent of the Council."⁴

While probation is by no means always an adjunct to suspension of the execution of a sentence, it does intrude upon the disposition of the case at a point where, upon the theory of the opinion just cited, there may be no delay in the process of dealing with the convict according to the code. It does take the offender from the well-worn path to an institution, and undertake a treatment for his betterment utterly different from that of the past and of precedent. A process so at variance with long accepted procedure could hardly be expected to find its place in statute law without qualifications and restrictions. That it has not been easy to free it from the color of clemency and concession is indicated in some of the statutes already cited, such, for example, as that which permits suspension only by the act of the governor of the state. It is reflected only less strongly in the laws which hold the probationer under the control of prison authorities. We get something of its shadow in the linking of the probation and the police functions. It emerges completely into full light only in those laws which place unrestrained discretion in the courts and equip them with an officer, or officers, charged with the duty of full investigation of the personal and intimate facts, the free conference with the court on the social and individual merits of the case and the thoroughgoing supervision of the convicted person in the spirit of helpfulness.

In the very recent case, *ex parte United States*, 242 U. S. 27, the suspension of sentence or of its enforcement in the absence of statute provision was held to be unconstitutional. But in this decision it is said:

"So far as the future is concerned, that is, the causing of the imposition of penalties as fixed to be subject, by probation legislation or such other means as the legislative mind may devise, to such judicial discretion as may be adequate to enable courts to meet by the exercise of an enlarged but wise discretion the infinite variations which may be presented to them for judgment, recourse must be had to Congress, whose legislative power on the subject is in the very nature of things adequately complete."

⁴*State of Maine v. Sturgis*, 110 Maine 96.

Perfectly natural apprehension as to the possible harm to society and even to the individual from what is rather loosely called lenient treatment have had to be met out of actual experience. An instance of consideration for the person may be cited to show how what appears to be a substantial objection proves to be fragile. There was a fear that the visit of the probation officer to the home of the person under his charge would be such advertisement of his criminal standing among his neighbors as to be disturbing, degrading and destructive. When the Departmental Committee of the British government in 1909 made an elaborate investigation of the operation of the Probation of Offenders Act of 1907, this objection was seriously urged upon them. It was one of the lingering apprehensions which formed a considerable group, and which would doubtless be reflected in the minds of many cautious American citizens. The Committee found no support for it, or for any of its kind, and in the report stated that "the act has already (after two years trial) proved to be of great value", and that it has shown when actively used that it could become a most useful factor in the penal law. American states which have most fully tested the law conclusively justify this foreign opinion.

EXPERIENCE JUSTIFIES PROBATION.

Increasingly with every year probation is justified as an essential of enlightened criminology out of the experience of those states which have most widely employed it. The facts they contribute must be the foundation for the plea for its extension into new territory and its emancipation from restrictions and limitations. Its operation is constantly under public observation. The persons under its charge are mingled freely with the law-abiding and always critical people. Is it conceivable that a state which had fully adopted the practice of dealing with convicted persons by outdoor reformation would continue in its use if it were accompanied by any breaking down of the safeguards of life and property?

In Massachusetts, which may be cited because of its longest experience, the number of cases placed on probation has grown from 13,967 in 1909 to 28,953 in 1916.⁵ Meanwhile, the number of commitments to institutions has declined proportionately. Probation became universal in its courts in 1898, and in the period that has elapsed, while the population of the state has increased by nearly a million, no additions have been built to its penal institutions, either state or county, and practically half their cells are vacant today. The great causative factor in such a result is conceded to be the use of probation. Other

⁵Massachusetts Commission on Probation, eighth annual report.

evidence of its increasing use and beneficent effect is shown in the collections by probation officers in the form of restitution, suspended fines in lieu of imprisonment, and non-support payments. The total for these in 1909 was \$49,067. In eight years it has grown to a total of \$418,315. The amount of the collections is nearly double the cost of the maintenance of the service. These figures argue a very substantial economy, measured by dollars, and only suggest that wiser and more valuable economy which may be described as human salvage.

The other measure for the appraisal of this method is the comparative personal results of probation and imprisonment. In 1916, in Massachusetts, 61.7 per cent of the prisoners sentenced to all prisons were found to be recidivists. Their number was 14,179 and they had served a total of 93,182 sentences, an average of over six and a half former commitments each.⁶ In hopeful contrast to this failure of institutional correction are the results of probation, which are shown, year by year, to yield upwards of 70 per cent of those placed on probation completing their term satisfactorily. In the longer view of the subsequent life of probationers we have the testimony of James P. Ramsay, a Massachusetts superior court probation officer, who in his recently published book, "One More Chance", states that out of 3,000 persons under his personal charge within a period of fourteen years, 55 per cent have shown by their subsequent life that they were permanently saved and have remained good citizens, while an additional 10 per cent have earned a fair rating. Dr. Bernard Glueck, psychiatrist at Sing Sing, commenting upon these figures, says, "One doubts very much whether there is a penal or reformatory institution in existence which could present a record such as this."

The judge of a municipal court of a western city is quoted as saying, "Carefully compiled statistics show that under the old system when first offenders were sent to the penitentiary or reformatory institutions, in a period of five years after serving their sentence, from 27 to 41 per cent were returned to court on their second offence, showing that the penal institutions have not been the best corrective methods so far as the individual is concerned. The probation system has almost reduced this to a minimum, during a period of five years the return to the court being little over 3 per cent."

The ninth annual report of the State Probation Commission of New York shows as results of probation that, in children's cases, 82.6 per cent were "discharged improved" and, in adult cases, the percentage was 76.4.

⁶Massachusetts Bureau of Prisons, First Annual Report.

The mass of testimony, from which the foregoing are but examples, establishes the stoutest claim herein made that probation justifies itself not only as a humane institution but as effective to the highest degree as a correctional and protective policy.

FEATURES OF A STANDARD PROBATION LAW

The advance of probation as shown in American statutes has been constant and sustained. But two reverses appear. One western state, in 1915, repealed its provision for juvenile probation officers, although leaving the other features of the juvenile law unchanged. A southern state, in 1910, suspended its general juvenile probation law, enacted two years before, except as to towns of a certain population, although providing for its employment in any county upon petition by a police jury to the governor. There has been no complete abandonment of ground once occupied. What may be expected is, the removal of hampering limitations which restrict the helpful process, either territorially or to classes of offenders.

It may be too early to urge an effort for a uniform probation law. But it is not too soon to say that the experience of the past twenty years has richly justified the broadest provisions and that the states where caution has checked a full acceptance of the plan will find an appeal to their humane statecraft in the example of their sister states, where legal conservatism has yielded to legal progress. If we may indicate the line of safe advance, we urge the bringing of statutes to conform to the following provisions:

(1) That probation should be made universal within the states, to the end that offenders even in sparsely settled communities should be treated helpfully and restored to right relations to society by practically the same methods as are employed in cities and large towns.

(2) That probation shall be made available for offenders of all classes, abolishing the distinction between crimes as to seriousness and doing away with the theory that the first offender is alone worthy of consideration for this method of salvage.

(3) That probation officers with pay be provided for every court. Good service is not to be expected in this field without compensation which, while it need not be extravagant, should be sufficient to make certain that the court has positive command of all the needed time of its officer. We join in the opinion of the British Departmental Committee, already cited, when it says, "The appointment of honorary," or, as we should say, volunteer, "probation officers may also be most valuable, but such appointment should be regarded as a supplement to, and not a substitute for, the employment of regular (paid) probation officers."

(4) That the control of the probation service be entirely within the court. To this end the appointment of officers by the judges should be final or subject to confirmation within the judicial system. The control of salaries should not be subject to the approval of political officials, the protection against excesses, if any is needed, to be in statute limitation of salary or a limitation of budget.

(5) That provision should be made for physical and mental examination of offenders for the determination of the treatment needed and the proper disposition of their cases by the court. A justifiable limitation of probation is to those persons physically and mentally capable of responding to its restorative efforts. Probation is too delicate an instrument to have its edge dulled by application to unresponsive material.

(6) That women be made eligible for appointment and that the supervision of women and girl probationers be as far as is practicable, uniformly given to officers of their own sex, in imitation of the one state in the union which now provides by law that no person shall be under probationary supervision by an officer of the opposite sex.

(7) That there should be supervision and co-ordination of the work by a state commission. But two states now have commissions on probation entirely distinct from other services. New York was the first to provide one, 1907, and Massachusetts followed in 1908. Vermont has recently merged a separate commission with its state board of charity. Certain other states have supervision as one of the duties of a state board while others have local advisory committees. The field of probation is so distinct and its problem so far unique that a separate administration in the name of the state seems essential.

Probation as a structure of the law rests upon a foundation of more than a single stone. It is the refinement of humanity as to the wrongdoer. It is the assertion that society is safer with its erring members set right, than with them subjected to institutional punishment, and that its general welfare gains by the same measure. Equally essential to its support is the declaration that rehabilitation should be undertaken at the earliest possible moment in the life of the apprehended person, and that it is more prudent, indeed the only economy, to give him study and apply to him restorative methods before he is sullied and the case made more difficult by commitment to an institution.

MINORITY REPORT

ARTHUR W. TOWNE

I endorse practically everything said in Mr. Parsons' valuable report for this committee. I wish, however, to be recorded as ques-

tioning just one thing, namely: The wisdom of leaving the appointment and the determination of the compensation of probation officers, and also the administration of probation, too largely in the hands of the judiciary. These matters must be regulated in different parts of the country more or less according to local conditions, but my thought on the subject has led me to favor interpreting probation as not so much a judicial as an administrative function. I believe that we should encourage experimentation to see how probation will work when administered by local executive boards.

FAMILY DISINTEGRATION AND THE DELIN- QUENT BOY IN THE UNITED STATES

ERNEST H. SHIDELER¹

INTRODUCTION

The purpose of this paper is to present in a summary way a comparative study of family disintegration as related to juvenile delinquency. Several such studies have been made in certain cities or institutions, but very few if any, have investigated the factor of parental and conjugal conditions in any comprehensive fashion. The present study is an attempt, as far as possible, to gather statistical facts, representing the United States as a whole, bearing on the relation of family disintegration to juvenile delinquency.

Although we do not yet have statistics covering the parental conditions of the delinquents in the various state institutions for juveniles in the United States as a whole, the annual report of the reformatory and industrial schools of Great Britain for 1895, contains this information for children in institutions for delinquent boys and girls. In this country, probably the best treatment of the subject up, to the present time, is that of Breckinridge and Abbott, which is a comprehensive study of the home conditions of boys and girls brought into the juvenile court in Chicago.² The work covers the statistics of the court on the subject for ten years and presents in addition a case study of several hundred delinquent boys and girls. A somewhat similar, but statistically less intensive, study was made on the West Side, New York City, and published by the Russell Sage Foundation in 1914.³

Dr. Healy, director of the Psychopathic Institute in connection with the Juvenile Court of Cook County, published in 1915 his treatise on *The Individual Delinquent*, which is probably the most scientific work we now have on the causes of juvenile delinquency. In this work, Dr. Healy points out the high correlation of defective home conditions with delinquency.⁴ Probably two other studies deserve mention. As early as 1897, D. W. Morrison published an interpretation of English statistics on parental conditions of delinquents.⁵

¹Graduate student, Department of Sociology, University of Chicago.

²*The Delinquent Child and the Home* (1912), Russell Sage Foundation

³*Boyhood and Lawlessness* (1914), Russell Sage Foundation.

⁴*The Individual Delinquent* (1915), Wm. Healy, p. 149.

⁵*Juvenile Offenders* (1897), D. W. Morrison.

One of the first case studies of juvenile delinquency was that made in 1907 by a candidate for the degree of doctor of philosophy at the University of Chicago.⁶ The Whittier Scale for Grading Home Conditions, which is somewhat analogous to the Binet-Simon Test in field of mentality is being developed by the Whittier State School.⁷

METHOD AND MATERIALS

Our purpose was not to obtain statistics which would cover the entire juvenile delinquent population in the United States, but, as far as possible, to obtain statistics which would be representative of the various states. Accordingly, from a list of the institutions for juvenile delinquents in the various states, those institutions which were the principal industrial schools or reformatories for boys were selected and a letter addressed to the superintendent of each institution.⁸ Wherever there was doubt as to which was the principal institution for delinquent boys, the request for information was sent to both schools. Fifty-five letters were forwarded to the various institutions in the forty-eight states and the District of Columbia. Where the information was inadequate, or the first address referred us to another institution, it was necessary to send additional requests.

The general letter requested information for the preceding year on the following points: (1) Parental Conditions of Boys at Time of Commitment, (2) Nativity of Parents, (3) Age at Time of Commitment, (4) Per Cent of Boys Coming from Cities of Over 25,000 Population. Of these four points, it seems advisable for several reasons to limit the present paper to the first and the last. The results of the tabulation of the information on the other two points will be presented at some future time. The writer then hopes to include a paper covering the same facts for delinquent girls in the United States and to present a comparison of the statistics for boys and girls.

Within two weeks, replies had been received from the majority of the north central and eastern states. In general, the superintendents were very courteous in furnishing the desired information, notwithstanding that in some cases it required considerable clerical work, especially where the annual report had not been prepared or published. Of the forty-nine possible returns (forty-eight states and the District of Columbia), thirty-seven were represented among the replies received. Of these thirty-seven, nine stated either that they had no

⁶A Case Study of Delinquent Boys (1907), Mabel Carter Rhoades.

⁷See Journal of Delinquency (Nov., 1916, pp. 273-86). (Published at the Whittier State School, Whittier, California.)

⁸A complete list of these institutions is published each year in the proceedings of the National Prison Association.

statistics covering parental conditions or that they had no state institution for juvenile delinquents.⁹ For five states not replying, the desired information was secured from earlier reports of the state institutions.

Responses to our inquiry reveal considerable differences among the states of the Union as to the progress they have made in dealing with the delinquent problem among children.

The following states have no statistics, nor has any reply to our inquiry for information been received from them:

Maryland, South Carolina, Georgia, Florida, Tennessee, Mississippi, Arkansas, Texas and New Mexico.

The following states replied stating that they have no statistics bearing upon the subject of our inquiry:

Connecticut, West Virginia, Virginia, North Carolina, Arizona, Nevada, Washington and South Dakota.

The following made no reply, but we were able to secure statistical data from old reports from these states:

Alabama, Louisiana, Oklahoma, Colorado.

The following states replied and furnished statistical data:

Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, New York, Pennsylvania, New Jersey, Delaware, Ohio, Indiana, Illinois, Kentucky, Michigan, Wisconsin, Minnesota, Iowa, Missouri, Wyoming, Idaho, Utah, Oregon and California.

As a result of our search for information concerning the disintegration of the families of juvenile delinquents, we have thirty-two out of a possible forty-nine states represented.¹⁰ The number of delinquents reported for each state in the tables should not be considered as representative of the number of delinquents in the states, as the information in some cases covers a period of two years, and in other cases, less than a year. However, the total study represents 7,598 delinquents from the various parts of the nation and may be considered to be representative of the eastern, northern, and western states, for the consideration of causative or correlative factors.

The term "parental condition" as used in this study has reference only to whether the parents are living together, or are separated by divorce, desertion, separation, death, insanity, imprisonment or commitment to an institution, but does not consider the other

⁹Mississippi is the only state not having such an institution, but the reply states that one is being constructed.

¹⁰The state industrial school of Illinois located at St. Charles replied, giving percentages, but not as to detailed factors, so that Illinois is included in the number, but is not represented in the tables. *Vide* footnote (b) to Table No. 1.

facts such as intemperance, mental defects, crime, disease, etc. Where the parents are living together, we apply the term "normal parental condition;" where the parents are not living together, we apply the term "abnormal parental condition."

We shall now take up first, the interpretation of the information furnished on the parental conditions of the delinquent boys in the various states, and second, a discussion of the facts relating to the percentage of delinquents coming from cities.

THE DELINQUENT BOY AND BROKEN HOMES

The family is an institution. As such it may be said to have both a structure and a function. The structure is composed of a father, mother, and children. Within the family, we have more or less constant interaction, both psychical and physical, between the different members. On the other hand, we also have the constant interaction between the family as a whole or of the individual members with the community.

From the viewpoint of the community, the function of the family is primarily that of reproduction and the training of the child in the "mores" of the group. The failure of the child to adjust himself to the "mores" of the group, brands him as a delinquent. Society places the responsibility, for this adjustment of the child to the "mores," upon the family. Accordingly, if this structure (the family) is made defective in any manner, we must expect that the functioning process will be impaired, resulting in probable imperfect adjustment of the child to the "mores"—juvenile delinquents.

It is in this sense that, in this paper, we use the term "defective family," meaning thereby that the normal structure of the family has been interfered with by the loss of a father or mother, or both, through death, divorce, separation, desertion, insanity, or imprisonment. Where such defect in the structure exists we shall also speak of such a family as a broken home or a "crippled" family, it being rendered thereby incapable of functioning properly.

While it is the function of the family as an institution to train the child in the "mores," there are a number of forces tending to prevent proper adjustment to the "mores" and to render the child delinquent. Where the family structure becomes defective, we then may have the weakening of opposition to, and the accentuation of, these forces which are antagonistic to proper social conduct. To such situations, we shall apply the term "family disintegration," and speak of it as a factor or force in juvenile delinquency.

The following table indicates the parental conditions of 7,598

juvenile delinquents covered by this study. The reader should understand that this paper is entirely a statistical study and as such is subject to the limitations and errors to which all statistical studies are subject. Any interpretations and conclusions, therefore, should be considered with these limitations in mind.

TABLE I

PARENTAL CONDITIONS OF DELINQUENT BOYS IN STATE INDUSTRIAL SCHOOLS.
TOTALS FOR THIRTY-ONE STATES (a)

Parental Condition	Number of Delinquents	Per Cent of Distribution
Parents living together (b).....	3,663	48.2
Mother dead	975	12.8
Father dead	1,362	17.9
	<hr/>	<hr/>
Total one parent dead.....	2,337	30.7
	<hr/>	<hr/>
Both parents dead.....	429	5.7
Parents divorced, separated or deserted.....	802	10.6(c)
Other abnormal (d).....	280	3.7
Unknown	87	1.1
	<hr/>	<hr/>
Total	7,598	100.0
	<hr/>	<hr/>
Total Normal (d).....	3,663	48.2
Total Abnormal	3,848	50.7(e)
Unknown	87	1.1
	<hr/>	<hr/>
Total	7,598	100.0
	<hr/>	<hr/>
Having step-mother	197	5.2
Having step-father	334	8.9
	<hr/>	<hr/>
Total having one step-parent.....	531	14.1(f)

(a) Includes only 41 girls (Montana). The states are: Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, New York, New Jersey, Pennsylvania, Ohio, Indiana, Michigan, Wisconsin, Minnesota, Iowa, Missouri, North Dakota, Nebraska, Kansas, Delaware, District of Columbia, Kentucky, Alabama, Louisiana, Oklahoma, Idaho, Wyoming, Colorado, Utah, Montana, Oregon, and California.

(b) Includes all cases not included under other headings. If report accounted only for those where parents were dead or separated, the remainder were assumed to be living together.

(c) Percentage based on 7,598 delinquents. Nine states failed to report on divorce, so that actually this percentage should be based on the delinquents reported by the twenty-two states, making 802 out of 5,856, or 13.7%.

(d) Normal—two parents living together; Abnormal—parents not living or not living together.

(e) Illinois not included. The letter does not give detailed information, but states 80% abnormal due to: death, divorce, and separation of parents. It is not known whether this is an estimate or actual per cent. The total number of boys was 722, making 572 or 80% abnormal and 150 or 20% normal. This included in our grand totals would make the total abnormal 4,420 or 53.1%.

(f) These cases were included under one parent dead, or divorced. Only twelve states kept statistics on step-parents. Therefore these percentages are based on the 3,753 delinquents reported by the twelve states.

Over one-half of the boys in state industrial schools in the United States come from broken homes. However, there is reason to believe that this is a considerable understatement of the facts as revealed by the contrast of statistics taken from records and those gathered by actual case investigation.

The study made by Breckinridge and Abbott included the statistics of the Cook County Juvenile Court on these points for ten years (1899-1909) and in addition a case study of 584 boys for the year 1903-04. The total abnormal or broken homes for the period of ten years, according to court records, was 12.2% less than the actual probable percentage as brought out by individual case study. Records taken at institutions are probably not as accurate or carefully kept as those taken from case studies. Consequently it may not be far fetched to assume that our 50.7% is probably low and that the actual percentage would be something like sixty per cent. This would mean, generalizing, that six out of every ten boys whom society brands as delinquent and has confined to a state institution for such persons, have lost one or both parents.

The following table is a summary of the tables of the most recent and important studies on this subject of the parental conditions of juvenile delinquents. The three studies are those of: Dr. Healy, covering one thousand repeaters among juvenile delinquents, in the Cook County Juvenile Court; Breckinridge and Abbott, covering the cases referred to above; and the study made by the Russell Sage Foundation on the West Side, New York City, and published as "Boyhood and Lawlessness."

TABLE II
SHOWING COMPARATIVE PERCENTAGES OF PARENTAL CONDITIONS OF JUVENILE
DELINQUENTS IN THREE PREVIOUS STUDIES MADE IN CITIES

Parental Conditions	Breckinridge and Abbott(a) 10 Years %	Breckinridge and Abbott(b) Case Study %	West Side New York City(c) %	Healy (d) 1,000 Repeaters %
Parents living together....	66.1	56.7	57.1	50.2
Father dead	13.6	19.9	22.7	8.7
Mother dead	8.9	9.8	8.6	15.4
Both parents dead.....	3.1	4.3	5.2	5.7
Parents separated(e).....	4.9	7.6	6.4	20.0
Other abnormal(f).....	.5	1.7	..	..
Not reported	2.9	..	..	..
	100.0	100.0	100.0	100.0

Total abnormal	31.0	43.3	42.9	49.8
Total apparently normal...	66.1	56.7	57.1	50.2
Not reported	2.9	..	..	..
	<hr/> 100.0	<hr/> 100.0	<hr/> 100.0	<hr/> 100.0

(a) *The Delinquent Child and the Home* (1912), p. 91, covers entire number of boys passing through the Cook County Juvenile Court, 1899-1909.

(b) *Ibid.*, p. 91. Covers case study of 584 boys in the Cook County Juvenile Court in the year 1903-04.

(c) *Boyhood and Lawlessness* (1914), Russell Sage Foundation, p. 171. Covers case study of 233 boys coming into the Juvenile Court from West Side, New York City.

(d) *The Individual Delinquent* (1915), Healy, p. 149. Covers 1,000 repeaters, that is, delinquents who have been brought into court a second time. Includes 306 girls.

(e) Includes divorce, separation and desertion. For Healy: 11.4% separation, and 8.7% desertion.

(f) In prison, insane, etc.

While the percentage for the total abnormal in these studies is somewhat lower than those in Table I, this is probably due to the fact that the delinquents studied are almost exclusively from the city. This difference between the city and the country will be discussed in the next section in connection with Table IV. The study made by Dr. Healy shows some irregularities in the percentages in comparison with the other studies, but it should be remembered that this study included 306 girls and also that all were repeaters. However, it should be noted that all of these studies bear out the relative high percentage of defective family conditions among juvenile delinquents as indicated by Table I.

It should also be noted that these boys, of whom a large per cent are without a father or a mother, or both, are probably the worst class of our delinquent children. It is only as a last resort that boys are sent to the state institution after all other means have failed. As a rule only after the persuasion of parents, friends, and relatives, has failed, after probation has been tried, and all other means of reform abandoned, is the child finally sent to a reform school.

An excellent test of this matter would be information as to the home conditions of our hardened criminals when they were young and in the making. Fortunately we have some evidence of this sort, as a result of a questionnaire sent out by the Philadelphia Juvenile Court and Probation Association, to the inmates of state penitentiaries in the United States.¹¹ One of the questions asked sought information as to the parental condition before the age of sixteen years. Mrs. Schoff, ex-president of the association, in writing of

¹¹Pamphlet issued by the Philadelphia Juvenile Court and Probation Association.

the result of the questionnaire, states that almost half of the convicts replying, had lost either one or both parents before they were sixteen years of age. This means by death only, so that a safe assumption would be that one-half of those replying to the question had lost one or both parents by death, insanity, divorce, separation, desertion, etc.

ENGLAND AND THE UNITED STATES COMPARED

Let us now compare our totals for the various states in this country with the totals for Scotland and England.

TABLE III
COMPARING PERCENTAGES OF DELINQUENT BOYS FROM BROKEN HOMES IN ENGLAND
AND THE UNITED STATES (a)

Parental Condition	—England and Scotland—		—United States—	
	Number of Delinquents	% of Distribution	Number of Delinquents	% of Distribution
Parents living together (b)....	1,383	44.5	3,663	48.2
Mother dead	534	17.2	975	12.8
Father dead	535	17.3	1,362	17.9
Both parents dead.....	130	4.2	429	5.7
Divorce, desertion, etc. (c)....	125	4.0	802	10.6
Other abnormal (c).....	402	12.8	280	3.7
Parental condition unknown...	..	..	87	1.1
Total	3,109	100.0	7,598	100.0
Total normal	1,383	44.5	3,663	48.2
Total abnormal (d)	1,726	55.5	3,848	50.7
Unknown .....	..	..	87	1.1
Total	3,109	100.0	7,598	100.0

(a) Figures for England and Scotland are taken from the Forty-ninth Report for Reformatory and Industrial Schools of Great Britain, 1895. These statistics are twenty years old, but they are the best obtainable at present and should be valuable for general comparison purposes.

(b) The English statistics give figures for the abnormal only—remainder of the boys were assumed to have normal parental conditions.

(c) English statistics do not mention divorce, but desertion only. Illegitimacy and parents destitute or criminal are grouped under other abnormal.

(d) For definition, *vide* note (b) to Table I.

The table shows evidence of the fact that in England and Scotland as well as in this country does the breaking up of the family go hand in hand with delinquency. While the statistics will not bear a detailed comparison, due to different situations and conditions in the two countries, yet in general there is a fairly close identity in the distribution of the most comparable items: Parents living together, mother dead, father dead, both parents dead. Because of different standards and methods of recording in England, the last two items in the table are not comparable.

With these facts relative to defective families and juvenile delinquency, let us consider what should be the proportion of delinquent boys coming from "crippled" families if family disintegration were not a contributing factor to delinquency.

In order to treat this relation of family disintegration to juvenile delinquency, in any final and conclusive manner and to present actual statistical evidence of the correlation, it would be necessary that we also should have the same statistical facts, which we now have for boys in industrial schools, for all of the boys in the total population. First, it would be necessary that we know the total number of boys in the population, whose ages fall within the same limits as those of the boys committed to industrial schools. Second, we should know what per cent of this particular part of the boy population would fall under the various parental conditions, were we to classify them as we have the boys of the industrial schools. Third, we should know the periods in the life of both the industrial school boys and the boys of total population during which the family disintegration took place.

With these facts we should then be able, more or less accurately, to correlate parental conditions of boys with juvenile delinquency, by comparing the proportion of boys in the industrial schools having certain normal or abnormal parental conditions, with the proportion of the same group of boys in the total population falling within the same classification.

However, we have no statistics showing exactly how many children in the United States have lost one or both parents. Such statistics would be valuable for many purposes, and in this particular case would give us a basis for pointing out the actual weight of the loss of parents in the process of producing delinquents. In the face of this, it becomes necessary to resort to estimates which are always unsatisfactory for definite conclusions.

ESTIMATES OF PARENTAL CONDITIONS OF TOTAL CHILD POPULATION

Rough estimates concerning the same facts as to parental conditions of the total child population of the United States are as follows: Children having one parent not living, 16%; children having lost parent by divorce, separation and desertion, 3.3%; orphans and other abnormal, 6%; total having abnormal parental conditions, 25.3%¹² While these estimates are very rough and unsatisfactory.

¹²These estimates are reached in the following manner. The per cent of children having one parent not living, might be roughly the per cent which the widowed form of the total child bearing population. Assuming that the married, widowed, and divorced produce all of our children, the widowed compose 11.4% of the child-bearing population (U. S. Census, 1910, Vol. 1, p. 509). Since the death of one of the married couple stops reproduction, the size of the family

for definite and exact conclusions, yet they are, undoubtedly, very conservative in view of the fact that a case study of the parental conditions of 688 non-delinquent children,¹⁸ made in Portland, Oregon, shows that only 19% come from disrupted homes as compared with 25.3% according to our estimates for the United States as a whole.

Accordingly, if there are twenty-five out of every hundred children in the United States, who have lost one or both parents, we should expect only twenty-five per cent (25.3%) of the juvenile delinquents to come from such homes.

However, we find that of 7,598 boys in industrial schools in the various states of the United States, there is one out of every two boys (50.7%) who were without one or both parents at the time of their commitment to an institution for reform. In other words, we must conclude that while not more than one out of every four boys in the United States are without one or both parents, these defective families furnish fifty per cent or one-half of the delinquents in our industrial schools.

DELINQUENCY AND FAMILY DISINTEGRATION: URBAN V. RURAL STATES

We have seen that the broken or defective family is closely related to juvenile delinquency both in this country and in England, and that

of the widowed, generally speaking, will fall below the average, while the number of children produced by the couples still living together will have a cumulative effect upon the percentage of children whose parents are still living. On this account, without going further, we may safely reduce the estimate to 8% instead of 11.4%. But we also must not overlook the fact that each person included in the number given as married (according to the Census) represents only half of a reproduction unit, while the widows and widowers each represent a whole unit or family. Consequently, in order to obtain the approximate per cent of children who are members of widowed families, we should double the above per cent, making 16%. This would mean that one out of every six children has lost one parent by death. While admittedly a very rough estimate, this is certainly conservative.

For divorce, separation and desertion, the approximate per cent of children who are affected by this type of family disintegration is 3.3%. This estimate is based upon the per cent of divorces among the married population. For the United States as a whole, the proportion of divorces to marriages is 1 to 12 (Report of Census on Marriage and Divorce, 1887-1906, p. 45). According to the Census, two out of every five divorces affect children (*ibid.*, p. 27). Assuming that the number of children in families where divorces are granted is the same as among normal families (although it would undoubtedly be less) we arrive at an estimate of 3.3% as the total proportion of children in the population affected by divorce.

A fair estimate of the number of orphans and of the number of children having lost one parent through other abnormal conditions (that is, insanity, imprisonment, etc.) would not be more than twice the number of children affected by divorce. Consequently, we may estimate it to be 6%. Adding these estimates, we have 25.3% as the estimate of the number of children in the population having broken homes.

¹⁸Study of 657 delinquent children and 688 non-delinquent children in Portland, Oregon, made by Bessie Nelson, Reed College, Portland, Oregon.

there is reason to believe that it is a contributing factor to delinquency. However, it is not intended for a moment to conclude from these facts that the defective family is the only factor making for delinquency, or that in these cases where we have defective families there are not also other contributing factors working along with family disintegration. In fact, if we find that in communities where we have reason to believe that contributing factors other than family disintegration are very strong, the percentage of delinquents coming from broken homes is smaller than in communities where other factors are probably less strong, our interpretation that the defective family is a primary factor, will be strengthened, not weakened. In such a case, we will simply be isolating family disintegration as a factor or force in producing delinquency, from other contributing factors. To the degree that we can isolate this factor from the maze of others, to that degree can we be certain of its existence as a factor.

While space does not permit of the presentation of the complete tabulation of the statistics for all states, the comparison of the urban with the rural states may be profitable. If urban life adds or strengthens forces tending to make boys delinquent, which do not obtain in rural and village districts, then we would expect to find a lower per cent (not number) of delinquent boys from defective families in the industrial schools of urban states or communities. On the other hand, if urban life does not contribute or strengthen the factors other than family disintegration, we shall expect (other things being equal) a larger per cent (not number) of boys coming from broken homes in urban state institutions, since family disintegration is greater in the urban than in the rural and village districts.¹⁴

TABLE IV

COMPARISON OF PERCENTAGES OF DELINQUENTS IN STATE INDUSTRIAL SCHOOLS FOR BOYS FROM STATES OF LESS THAN THIRTY PER CENT URBAN POPULATION WITH STATES OF OVER SEVENTY-FIVE PER CENT URBAN POPULATION AND CITIES

States Having Over 75% Urban Population (a)	Per Cent Urban (b)	Per Cent of Delinquents from Defective Families
Massachusetts	92.8	31.4
New York	78.8	42.6
Rhode Island	96.7	34.8
District of Columbia.....	100.0	45.9
New Jersey	75.2	53.0
Average for group.....	88.7	41.5

¹⁴Marriage and Divorce Bulletin No. 96: 1887-1906 p. 22 (U. S. Census Report), 1914.

States Having Not Over 30%		
Urban Population (a)		
Wyoming	29.6	64.2
Nebraska	26.1	57.3
Kentucky	24.3	53.1
Kansas	29.2	69.3
Idaho	21.5	55.1
Alabama	17.3	77.5
North Dakota	11.0	45.7
Oklahoma	19.3	50.0
Louisiana	30.0	56.1
<hr/>		
Average for group.....	23.1	58.7
<hr/>		
Large Cities (c)		
Chicago	100.0	35.1
New York	100.0	31.9
<hr/>		
Average for cities.....	100.0	33.5

(a) States for which we have statistics on the parental conditions of delinquent boys in their state industrial schools. There are several other states which would fall within each of these groups, but we do not have the statistics concerning the delinquent boys in those states.

(b) Statistical Abstract, 1915, p. 39. Urban population "comprises that residing in cities and other incorporated places of 2,500 inhabitants or more..."

(c) Annual Report of the Cook County Juvenile Court, 1915; Report of the Children's Court (New York), 1913, p. 78. Covers all delinquents passing through the court. These statistics are not altogether comparable with those of industrial schools, but the comparison is presented for what it is worth. The latter are probably a more hardened class of delinquents.

While there seems to be no close relation between population and the per cent of delinquents from broken homes when individual states are compared, yet when strictly urban states as a group are compared with strictly rural states as a group, apparently the percentage of delinquent boys coming from homes affected by family disintegration is in inverse proportion to the percentage of urban population.¹⁵ That is, in strictly rural states, the per cent of delinquents coming from defective families is highest, while the per cent from urban states is conspicuously less than the per cent from the rural states. Where there is a still greater urban population, that is, in entirely urban communities, we find that the per cent of family disintegration among delinquents is less than in the urban states. Should we take into consideration, the fact that the death rate and the divorce rate are much greater in urban states and cities than in the rural states,

¹⁵The other states which are neither strictly urban or rural, do not appear to show any close relation between per cent of urban population and percentage of delinquents from defective families. This is apparent only by using extremes. The variation of other contributing factors probably obscures this inverse proportion in all intermediate cases.

this inverse proportion of percentage of delinquents from defective families with the percentage of urban population, would appear more conspicuous than it does in the table above.

The fact that in the more urban communities, we have a relatively small per cent of boys coming to industrial schools from broken homes, shows not that the effect of family disintegration is lessened in proportion to the increase of urban population, but that in the urban communities, we probably have new or strengthened factors entering in, which makes boys delinquent regardless of normal family conditions in the home. Evidently such other contributing forces are absent or less strong in the less urban or more rural communities or states, and consequently a large per cent of the delinquent boys coming to industrial schools in the more rural states are the victims of delinquency, more largely due to the lack of a father or mother, or both. The effect of the "crippled" family as making for delinquency is no less strong in the city than in the less urban community, but the number of boys made delinquent by other forces in the urban community, lowers the per cent (not the number) of delinquents coming from "crippled" families.

In passing, as another test of this principle, we may notice the situation in England and Scotland, according to the statistics for those countries. The following table divides the totals given in Table II according to the respective percentage of delinquents in England and Scotland in comparison with the density of population of the two countries.

	Persons Per Square Mile	Per cent of Delinquents from Defective Families
Scotland	156.5	67.3%
England	618.0	51.5%

Again we find that the district which is more largely urban contributing a far smaller per cent (not number) of delinquents coming from broken homes. Scotland with its less urban population, has 15.9% more delinquent boys from defective families than does England with its highly urban population.

MOTHERLESS AND FATHERLESS BOYS WHO ARE DELINQUENT

For the 7,598 juvenile delinquents covered by the reports of the various state industrial schools,¹⁸ we find that 975 or 12.8% come from homes without a mother. The tabulation of this information also shows that 17.9%, or, approximately one out of every six of these

¹⁸Vide footnote to Table I.

delinquent boys had no father at the time of commitment to reformatory institution. As stated before we have no statistics giving the per cent of motherless and fatherless children in the total child population of the United States with which to correlate these facts. However, conservative estimates places the per cent of motherless and fatherless children at not more than 16%.¹⁷ According to the census of 1910, the ratio of widows to widowers in the United States is 15.1:6.4.¹⁸ From these statistics we may estimate the proportion of motherless to fatherless children in the United States to be 6.4:15.1, or, approximately, 2:5. If then, the total motherless and fatherless children form 16% of the total child population, it appears that the respective percentages of motherless and fatherless children would be roughly 5% and 11%.

If we accept these estimates, which appear to be very conservative, we find that while approximately one boy out of every twenty in the United States has lost his mother by death, one boy out of every eight in the industrial schools has lost his mother. The odds against the boy without the influence of a mother apparently are tremendous. We might expect that it will be difficult for an industrial school to supply in the boy's life that which is lacking, due to the care of a mother. Indeed, as pointed out before, we find evidence that these delinquent boys who come from defective families, form the larger part of our most hardened and difficult cases. The death of the mother means or may mean one of several things: The placing of the child in an institution; the hiring of a woman to care for the house and children; if over ten years of age, possibly the leaving of the child to care for itself during the day; or the widower may remarry bringing a step-mother. All of these or any of them, do not remove the defect in the original family structure, nor insure its proper functioning.

¹⁷Vide footnote 12, page 717 f.

¹⁸The per cent of widowers among the total male married (includes all married, widowed or divorced) population over fifteen years of age, is 6.4%. The same percentage for widows is 15.1%. For purposes of a rough estimate, we may assume the married, widowed, and divorced to comprise the total child-bearing population. Since there is no reason to believe that there will be any great difference in the size of families where the mother dies than where the father dies, and since there would be as many childless families among the widows as widowers, we may estimate the proportion of motherless children to fatherless children in the country as 6.4%: 15.1% or approximately 2:5. The question as to whether more widowers than widows remarry may be raised here. However, since it is debatable whether the difference is so great as to appreciably affect our point, it is not considered in the estimate. Even were it true that a larger per cent of the widowers than widows remarry the difference would not be so great as appreciably to alter this proportion. Above percentages are taken from the Abstract of Census, 1910, p. 147.

Contrasting the motherless to the fatherless boys in state industrial schools, we find that the boy having lost his father is far more numerous than the motherless boy (17.9%:12.8%). Several students of this subject have pointed out very clearly the relatively large per cent of boys in these institutions who have lost their father as compared to those who have lost their mother. Breckinridge and Abbott in their interpretation of these facts for the city of Chicago use this as the basis for the statement that evidently the strong right arm of the father is more effective than the gentle influence of the mother. That a third again as many of the delinquent boys have no father as have no mother, seemed quite conclusive that the father's influence was the greater of the two in reference to the boy's conduct. This however, so far as statistics are concerned, is very doubtful.

The fallacy of this and other interpretations of similar results in local studies, lies in the fact that no attempt has been made to ascertain whether there is not the same disproportionate number of fatherless children in the total child population. In a preceding paragraph, we noted that although we have no exact figures on this subject, there is reason to believe that the fatherless children far exceed the motherless children in numbers in the total child population, estimates placing the ratio as high as 5:2.¹⁹

Consequently, if the loss of the father were of no effect whatever as far as delinquency is concerned, we should expect to find a much greater per cent of the boys in these institutions for the delinquents who had lost their father than who had lost their mother. In fact, so great is the large proportion of fatherless children as compared to the motherless in the total population, it is evident that there are relatively more motherless than fatherless boys in industrial schools. This being the case, we might conclude by using the same method of argument which former students have, that since there are only twelve (12.8%) motherless boys as contrasted to seventeen (17.9%) fatherless boys in institutions for delinquents (or, in other words, about two to three) the mother's influence is considerably stronger in the boy's life than is the father's influence, so far as the boy's social conduct is concerned.

The economic explanation put forth by those who have heretofore interpreted these statistics, to the effect that the father's influence is the stronger, when closely examined, also proves a boomerang. This argument really strengthens the point that the loss of a mother has a greater correlation with delinquency than does the loss of the

¹⁹*Supra* footnote 18, page 722.

father. When a boy loses his mother, he does not encounter the great economic pressure as is the case where he loses his father. The father is able to provide for the motherless boy, while at the death of his father, either the boy or his mother must make the living. Consequently as far as the economic factor affects the boy's social conduct, we should expect more fatherless boys than motherless boys to become delinquent. Notwithstanding this, we have reason to believe that the motherless boys form a *relatively* larger proportion of our delinquents in industrial schools than do the fatherless boys. Moreover, the fact that at the loss of the father the boy partially loses his mother also, since she must go to work, and yet relatively not as many fatherless boys become delinquent, reinforces the conclusion that the mother is the stronger factor of control in the boy's life.

If this is the case, the situation is more hopeful than it would be, were the facts reversed, for undoubtedly the larger part of our children who have only one parent living are those who have mothers only. By a promotion of such movements as that for the Mothers' Pension, we can hope partially to remedy the economic factor which takes the mother from the home and from the proper care of her children.

BOYS WHO ARE BOTH ORPHANS AND DELINQUENTS

One would surmise that boys who have neither father or mother living and have been thrown entirely out of their natural home environment, form a large part of the industrial school population. Contrary to this, orphans form a small per cent of the number of boys in our state institutions for the reform of children.

Space does not permit of a detailed comparison of the percentages of orphans in the various state institutions. In general the percentages range from 0% in Kansas and Maine to 23.4% in Alabama, the latter high percentage probably being due to the conditions peculiar to the large colored population of the South. The per cent of orphans among delinquents in the cities of Chicago and New York is 3.5% and 1.6%²⁰ respectively, as contrasted with 5.7% of the total for thirty states. It would be of great help in understanding these percentages should we have information as to the number of orphans in the total population. The per cent of orphans among the total child population is probably low, and the placing of a large per cent of orphans in other kinds of institutions in undoubtedly the explanation of the low percentage.

²⁰Per cent of boys who were orphans passing through juvenile courts during one year—New York Annual Report, 1913; Chicago Annual Report, 1915.

Taking these facts into consideration, it is quite fair to infer that although the per cent of orphans in industrial schools is very low, it is high relative to the number of orphans in the child population.

The percentage for large cities corresponds in general to the lower percentage in all parental factors in the cities. The extreme difference, however, between the percentage for the total for all states reporting and that of cities probably needs further explanation than the principle pointed out in the first part of this paper contrasting urban and rural communities as to statistics on parental conditions.²¹ In large cities, we have numerous organizations and institutions for orphaned children and consequently the child is placed in one of these institutions while young. It follows that a large per cent of the orphans in the cities would be in other than institutions for the delinquent.

THE DELINQUENT BOY AND UNBROKEN HOMES

The number and percentage opposite the heading—Total Normal—in Table No. I²² corresponds to the number and per cent of those boys in state industrial schools who at the time of their commitment had both father and mother living and as far as is known from the information, are living together. In other words, these boys come from unbroken homes. Almost one-half, 48.2%, of the delinquent boys have had the care of both a father and a mother. It should be remembered, however, as pointed out earlier in this paper, that individual case studies of delinquent boys lower this percentage considerably and that the failure of some institutions to make any records of facts concerning broken homes other than those broken by death, make it highly probable that some of these boys classed under normal home conditions come from homes broken by divorce, insanity, etc.

If we consider that from forty to fifty per cent of the boys have both parents living together, we have evidence of the enormous strength of factors other than family disintegration. Some one has said that some boys would be better off without parents than the ones they now have. This is undoubtedly true. The amount of drunkenness, immorality, and criminality among the parents of many delinquent boys, as brought out by local and individual studies, makes the home in many cases as unfavorable and the family as imperfect for proper functioning in adjusting the offspring to the "mores" as does the loss of a parent or both parents by death.

²¹*Vide supra*, pages 718-721.

²²If only percentages covering abnormal cases were given, the remaining percentages were tabulated as normal. Where record was not kept as to boys from divorced families, such cases would be included under normal.

The same percentages covering parental conditions for delinquents passing through the juvenile courts of Chicago and New York²³ are 64.4% and 68.5%, respectively, as compared to the 48.2% for the total for the various states as shown in Table No. 1. However, the case studies made in each of these cities lower this percentage to 56.7% for Chicago and 57.1% for New York.²⁴ In other words, in large cities over half of the delinquents come from families which are normal as far as the loss of parents is concerned. This again points out the fact that there are probably additional factors contributing to delinquency in the city, which are either weak or lacking in the less urban districts.

THE DELINQUENT BOY AND DIVORCED PARENTS

Of the total number of state institutions from which information was secured, twenty-two,²⁵ or two-thirds, kept statistics with reference to the separation or divorce of parents of their boys at the time of commitment. According to these replies, 802, or 13.7%, of 5,856 boys in these state industrial schools came from families "crippled" by divorce, separation, and desertion.²⁶ Space again does not permit the presentation of the complete tabulation and a detailed comparison of the percentages for all of these states. However, in general we may say that, with certain exceptions, it appears that the per cent of boys from families affected by divorce, separation, and desertion, varies with the divorce rate or the number of children affected by divorce in those states.

If we were to ask the question as to whether the number of children in the total population of children who have lost parents by divorce, separation and desertion, are furnishing more than their proportion of the delinquents in the industrial schools, we again have no census of the total number of such children in any one state, or, for the United States as a whole, for any one year. However, the census does provide us with a basis for an estimate. In a series of estimates (*supra* p. 717) we found the per cent of children who have been

²³Chicago Report for 1915, p. 35; and New York Report, 1913, p. 78. Attention is again called to the fact that these statistics are for all juvenile delinquents passing through the courts; those for states are for state industrial schools.

²⁴*Supra*, Table II.

²⁵New Hampshire, Vermont, Massachusetts, New York, New Jersey, Ohio, Indiana, Michigan, Wisconsin, Minnesota, Iowa, North Dakota, Nebraska, Kansas, District of Columbia, Kentucky, Louisiana, Montana, Idaho, Utah, Oregon, and California.

²⁶Table I makes this 10.6%. This variation is due to the fact that the totals for this table include nine states which failed to keep statistics on divorce.

affected by divorce, in the total child population, to be 3.3%. Another estimate based on the statistics of the Census Marriage and Divorce Bulletin makes this proportion 2.2%.²⁷ It may be fair, then, to assume that the per cent of children in the total child population who have been affected by divorce is between 2% and 4%.

Apparently about three (2% to 4%) out of every hundred boys are affected by divorce, separation and desertion, while more than thirteen (13.7%) out of every hundred boys in our reform schools come from such families. This extremely high correlation of divorce, separation and desertion means that these disintegrated families furnish four or five times their proportion of the industrial school population of the United States. This fact should not be surprising, since the disintegrating forces that break up the home are also contributing to the delinquency of the children. The fact that there is trouble and dissension between the parents means that the child is brought up in an atmosphere which is conducive to delinquency, a fact which is probably not true of any large per cent of the cases where the father or mother dies. So that a boy who comes from a home which was such that it was broken through the dissension of the father and mother, has relatively less encouragement toward a proper adjustment to the "mores" than has the boy who loses his parent by death. For in the case of one parent being dead, during the time that the parent was in the home, there is more probability of proper parental care of the children than in the case where the parent was lost through dissension within the family.

THE DELINQUENT BOY AND STEP-PARENTS

Only twelve state industrial schools furnished information as to the number of boys who had step-parents at the time of commitment.²⁸ Of the 3,753 delinquent boys reported by these institutions,

²⁷The Census Bulletin on Marriage and Divorce No. 96, published in 1914, page 99, provides us with the number of children who were affected by divorce during a total of twenty years, 1887-1906. In order to be conservative and to make allowance for additional children losing parents by separation and desertion, let us assume that the number of children who have been affected by these factors in the year 1910 was not more than was the number of those affected by divorce during the whole twenty years, 1887-1906. The total number of children affected by divorce during these twenty years was 637,800. The total number of children under fifteen years of age in the United States in 1910 was 29,499,136 (Federal Statistics of Children, Part I, 1914, p. 10). Thus we arrive at an estimate of 2.2%.

²⁸Maine, Massachusetts, New Hampshire, New Jersey, Ohio, Indiana, Wisconsin, Minnesota, Nebraska, Kentucky, Colorado, and California.

531, or 14.1% had either a step-father or a step-mother when they were taken from the home and placed in the industrial school. Of these, 5.2% had step-mothers and 8.9% had step-fathers. These facts give us no basis for estimating the effects of the step-parents upon the social conduct of the boys. There is no evidence as to whether the step-parent is preventive or conducive to delinquency. That one-seventh (14.1%) of the delinquent boys had a step-parent at the time it was found necessary that they be sent to an industrial school, makes it questionable whether the introduction of a step-parent is, to any great extent, effective in overcoming the delinquency of the boy.

The prevalence of delinquent boys having step-fathers, as compared to those having step-mothers may be interpreted by some to mean that the substitution for the natural mother is more helpful to the boy, from the viewpoint of his social conduct, than is the substitution for the natural father. However, a more likely explanation is that there are probably more boys with step-fathers in the total child population. It is to be noticed that the ratio of boys having step-fathers to those having step-mothers (8.9% to 5.2%) is not greatly different from the ratio between fatherless and motherless boys in these institutions (17.9% to 12.8%). Another suggestion contrary to the above mentioned interpretation on this comparison is the theory of students of the family that the male's relation to the offspring is more or less secondary to his affection for his mate. If we should accept this theory, the substitution for the natural father would appear to be far less injurious to the structure and functioning process of the family, than would be the substitution for the natural mother.

JUVENILE DELINQUENCY: CITIES VS. LESS URBAN DISTRICTS

In reply to the request for the percentage of delinquents from cities of over 25,000 population, sixteen state institutions gave information on this point, four of these stating that there were no cities in those states having 25,000 population.²⁹

The following table shows the percentages of delinquents who were committed from cities of over 25,000 population to twelve state industrial schools, comparing this percentage with the per cent of the total population living in cities of over 25,000 population in the corresponding states.

²⁹Vermont, South Dakota, Nevada, and Arizona.

TABLE V

SHOWING THE EXCESSIVE PROPORTION OF DELINQUENT BOYS IN STATE INDUSTRIAL SCHOOLS FROM CITIES OF OVER 25,000 POPULATION

State	Per Cent of Delinquent Boys from Cities ⁸⁰	Per Cent of City Population in State
New Jersey	91.6	80.4
Ohio	65.3	62.1
Illinois	66.2	67.4
Wisconsin	58.0	25.3
Iowa	46.2	14.8
Nebraska	52.0	16.2
Kansas	34.4	13.8
Virginia	34.2	14.1
West Virginia	13.7	8.5
Utah	65.0	31.0
Oregon	25.0	30.1
California	49.4	45.0

A recent article in the *Journal of Delinquency*⁸¹ concludes that for one state, the villages rather than the cities furnish the larger proportionate share of delinquents. This conclusion is based on a study of the population of a state industrial school. The inconclusiveness of such facts for purposes of generalization is due to the fact that the large cities send only a part of their institutional delinquents to the state industrial school, since the cities have institutions of their own for delinquent children. In Chicago for the year 1915, only 54.3% of all delinquent boys, actually committed to some institution, were committed to the state industrial school, while 45.7% were distributed among four other institutions for such children.⁸² Obviously the statistics of state institutions might show evidence favorable to large cities, when some cities do not send to the state industrial school many more than half of the boys committed to institutions.

Notwithstanding this fact, the above table shows that of twelve state industrial schools, all, except two, show a larger percentage of delinquent boys from cities, in proportion to the city population in the whole state. The Illinois percentage shows that the cities lack less than two per cent of their proportionate share in the state in-

⁸⁰Meaning by city places of over 25,000 population, according to the Census of 1910. A number of replies gave the figures based on counties having cities of this size. In these cases the total population of such counties was used in figuring the percentage of city population in the state.

⁸¹March, 1917, pp. 74-91: *Delinquency and Density of Population*, by Williams.

⁸²Annual Report of Cook County Juvenile Court (Chicago), 1915, p. 40.

dustrial school, notwithstanding the fact that there are many other municipal and county institutions to which delinquent boys are committed in that state. The other exception, Oregon, is probably explained by the same situation, Portland furnishing the entire twenty-five per cent of the delinquents to the state industrial school. The central rural states, Kansas, Nebraska and Iowa show the greatest relative percentage of delinquents from cities, the proportion being three times the proportion of population living in city districts. In view of the relatively greater number handled through probation in the city, such facts indicate the multiplication of contributing factors to delinquency in the city.

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

The following are the facts which have been brought out by this study:

1. Out of 7,598 juvenile delinquents³³ in industrial schools in thirty-one states, 50.7% came from "crippled" families.³⁴ According to our estimates, the proportion of children in such families in the total population of the country is not over 25.3%.

2. Contrasting a group of strictly urban states with a group of strictly rural states, there appears to be an inverse ratio between the proportion of delinquent boys in state industrial schools coming from "crippled" families, and the proportion of urban population in the corresponding states.

3. Twelve and eight-tenths per cent, or, approximately, one in eight of the delinquent boys in state industrial schools of thirty-one states, had no mothers living at the time of their commitment.

Seventeen and nine-tenths per cent, or, approximately, one in six of these delinquent boys in state industrial schools, of thirty-one states, were fatherless at the time they were sent to an institution for reform.

4. The proportion of fatherless boys to motherless boys in these industrial schools is 17.9:12.8, or, roughly, 3:2. An estimate of the proportion of fatherless boys to motherless boys in the total child population is 15.1:6.4, or, roughly, 5:2.

5. Thirty and one-tenth per cent, or about one out of every three boys in these state industrial schools, have lost either their father or mother by death. Our estimate places the per cent of such children having lost one parent by death, in the total population of the United States, at 16.0%, or one out of six.

³³Includes only 44 girls—Montana.

³⁴For definitions of terms such as crippled, defective and disintegrated families, *vide supra*, pages 712 and 718; for parental conditions, abnormal and normal home and families, *vide supra*, pages 713 ff.

6. Of the 7,598 delinquent boys in these industrial schools 5.7% were also orphans.

7. Eight hundred and two or 13.7% of 5,856 delinquent boys in twenty-two state industrial schools, came from families "crippled" by divorce, separation and desertion. According to estimates, two to four per cent of the total child population have been affected by divorce, separation and desertion.

8. Of the delinquent boys in the industrial schools of twelve states, 5.2% had step-mothers and 8.9% had step-fathers at the time they were sent to an institution for reform.

9. Of twelve state industrial schools, ten show a larger proportion of delinquents from cities of over 25,000 population than the proportion of the city population would justify.

CONCLUSIONS

Attention is again called to the inadequacy of the census information concerning children to enable us to arrive at such conclusions as would be possible had we more detailed facts concerning the child population of the United States. For correlating purposes, it has been necessary to rely entirely upon a series of estimates concerning the parental condition of the total child population, which estimates are always unsatisfactory for anything like definite deductions from our information concerning delinquent boys in state industrial schools.

In arriving at any conclusions concerning juvenile delinquency, it should be kept in mind that this is entirely a statistical study and that, as pointed out before, it is subject to the limitations to which all purely statistical studies are subject. With these limitations in mind, the following conclusions seem to be warranted from our survey of the information received from thirty-one state industrial schools:

1. Family disintegration shows a high correlation with juvenile delinquency (25.3% : 50.7%, or, $\frac{1}{4}$: $\frac{1}{2}$). This, as far as the child is concerned, is to be expected, since the functioning process of the family has been rendered defective.

2. The apparent inverse ratio between the percentage of delinquent boys from "crippled" families, and the percentage of urban population points toward a multiplication of contributing factors to delinquency in the urban districts.

3. That the loss of a father is more injurious to the boy (from the viewpoint of his social conduct) than is the loss of a mother, is not certain and even doubtful.

4. Boys who have lost one parent by death constitute twice their proportion of the delinquents in industrial schools.

5. Families "crippled" by divorce, separation and desertion, furnish four to five times their proportion of the boys committed to industrial schools. This type of the disintegrated family correlates higher with delinquency than any other classed as "abnormal."⁸⁵

6. Compared to the total village and rural population, the cities furnish an excessive proportion of the delinquents to state industrial schools.

RECOMMENDATIONS

As a result of this investigation, the following recommendations are made:

1. Local studies of the correlation of family disintegration and juvenile delinquency should be made. These studies should be intensive and the generalities and estimates used in this study avoided.

2. Information of value for the study of child welfare problems should be given more emphasis in all census enumerations. Whether a child is without a father or mother may be more important, from the viewpoint of society, than information concerning the nativity of the child's parents.

3. There is need for a special study providing facts showing the ages at which juvenile delinquents are affected by family disintegration, comparing these with the same facts for the whole child population. Such a study, with the statistics covering the parental conditions of children in the United States, would permit definite conclusions on the subject of family disintegration and juvenile delinquency.

4. Institutions for delinquent children should adopt a uniform and comprehensive schedule for recording facts concerning the history and previous environmental conditions of boys and girls committed to them. This could be undertaken through any or all of the following agencies: National Conference of Charities and Correction; American Institute of Criminal Law and Criminology; National Prison Association and National Probation Association.

5. The Mothers' Pension Movement should be encouraged.

6. A great deal of emphasis is being given to the study of the divorce problem. More attention should be concentrated on the welfare of children affected by divorce.

7. School courses and literature on the study of the family as an institution, should be introduced generally throughout the United States, looking toward an adequate understanding of the family as an institution and toward building up of family integrity.

LEGAL AID FOR POOR PRISONERS

ROBERT FERRARI¹

There are no such things in Paris as Legal Aid Societies as we know them in America. Aid in civil matters is given by the state. Legal Aid Societies in America do not defend poor prisoners. The system here of appointment of counsel for the prisoner by the judge is used in France; but only in certain cases. For instance, if the President of the Cour d'Assises (the County Criminal Court with a jury), when he examines the defendant before his appearance in his court, which he has the duty to do under French law, finds that the defendant has no lawyer, he appoints one on the spot. Usually, however, the appointment is made by the *bâtonnier*, the President of the Order of Barristers.

The people who are appointed in France are good. An investigation by a committee of the New York County Lawyers' Association, brought out the fact—testified to by judges and district attorneys throughout the state—that in the smaller towns of the state young and inexperienced men were assigned as counsel for the defense of prisoners. This may be true. But in some large cities like the City of New York, it is not young and inexperienced counsel who are appointed, but counsel who have been in practice for some time and who know a great many pettifogging tricks of the trade. They are shysters, pure and simple. The reasons for the existence of the shyster I shall only indicate here, and I shall draw a comparison between him and the kind of lawyer you find in the *Palais de Justice* in Paris.

In a city like New York, you have criminal lawyers constantly practising in the Criminal Courts Building, who have no scientific knowledge of the law and have only a practical knowledge such as the pettifogging lawyer has. Whether a question may be asked in one way, and whether a question may not be asked in another way, is what they know, and the question is, in nine cases out of ten, absolutely unimportant. But yet it has been decided that the question may not be asked, and so the question is excluded. The information, of course, is got in in some other way, only the time of the court is wasted. The education of those people is wholly neglected; they are

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usually foreigners who have been in America for only a short while. The easy method by which a person may become a lawyer in the City of New York conduces to the flooding of the profession—so-called—with perfectly incompetent and undesirable individuals. A great many of them practising in the Criminal Courts Building cannot speak five words without making five mistakes. How well the interests of a poor prisoner are guarded by these individuals has been described over and over again. They do not study the case, oftentimes they know nothing at all about it until they come to court. If they can get any money from the client—ten dollars or fifteen dollars—they are overjoyed to get it; but they will not work even fifteen dollars' worth. They know neither the facts nor the law of the case, but depend upon the "inspiration" of the moment. In addition to all these qualities, the New York lawyer practising in the Criminal Court Building has no corps spirit. He is not very much to be blamed for the lack of this spirit. It is difficult for anybody to become imbued with the corps spirit in New York City. In Paris, on the other hand, there is this spirit, and there are traditions. Traditions are more easily got where there is a corps spirit and where there is a common place of daily assemblage and daily communication, as in Paris. One of the great functions of the *Palais de Justice* is the formation of this spirit in the legal profession and the inculcation and the maintenance of the traditions of the Bar. It is very hard in a large city like the City of New York to become imbued with the traditions of the English and American Bars. You may read a great deal about that spirit; it may become infused into you, but it is always a sort of non-assimilated thing, always a thing which is not part of you. How can it become part of you? There is no daily, constant practice which makes it possible for the thing to become part and parcel of your being. And then these things that you read about seem to be so far off, and the daily practice seems to be so different from what you read!

In the *Palais de Justice* lawyers meet every day in friendly communion. Struggles are had in common and triumphs are enjoyed together. It is a most interesting sight to see a lawyer plead for the first time. Imagine such a proceeding in an American court, especially in a large city! It will go unnoticed and unencouraged. In the *Palais de Justice*, a person who pleads for the first time is watched with a great deal of anxiety and trepidation, and at the end of his *plaidoirie* he is warmly congratulated by his confrères. The traditions of the Bar are maintained. They are taken in from the atmosphere, they make a young attorney ambitious and emulous of his more

experienced brothers. There is, furthermore, an opportunity in almost every case, especially in almost every case in the *Cour d'Assises*, to make a reputation as a good pleader. For it must be understood that a French trial is no such thing as a trial in America or in England is. The term "trial" in a French Court of Justice is a misnomer so far as the part of the attorney for the defendant is concerned. There is no examination or cross-examination of the witnesses; there is no presentation of the evidence by him or even by the District Attorney. All the work is done by the President in the examination and cross-examination of the witnesses and in the presentation of the case to the jury. The attorney for the defendant gets his opportunity, and makes the most of that opportunity, in his summing-up speech. This speech I shall describe more at length in some other communication, but at the present time I may say that it is not a discussion of the facts such as we know in American courts, so much as an exposition of facts, especially an exposition of facts relating to the defendant's life. Compare this situation with that in General Sessions of New York County. There are five or six parts working at the same time; many mills keep grinding out justice at a furious rate. Lawyers come in for a few hours and go out. Very few attorneys speak to each other. It is only the continuous habitués of the court who chum together. And among these habitués of the court, as I have so often said, there is absolutely no sense of responsibility in regard to the duties of the bar. They do not become acquainted with the traditions of even the criminal bar, or, if they do, the traditions are not those of the best part of American legal professional life. Their appearance in court goes almost unnoticed, and the appearance in court of a lawyer for the first time is either not watched, or, if it is watched, it is watched with hostility or indifference.

Another important difference between the lawyer in Paris and the lawyer in the City of New York in assigned cases, especially, is that the lawyer in Paris studies the case much more profoundly than the lawyer in New York City. This is due to two reasons: First, as I have already said, the Parisian lawyer is better educated; second the Parisian lawyer has an opportunity, because of the French system, to know all the details of a case before it comes to trial. These details are details of fact and not details of law. The law is very rarely discussed in the *Cour d'Assises*. This is one of the great striking differences between a trial in a French court and a trial in an American court. In an American court there are a great many squabbles concerning the law in the case. I refer not only to the quarrels about

facts, but also to the quarrels concerning the law governing the charge. In a French court, the attorney for the defendant, who has already studied the *dossier* which comes up from the *juge d'instruction*, has prepared his argument for the jury. Very rarely, if ever, does anything come out in open court which is not already in the *dossier*, so that there are no surprises to the attorney for the defendant (and, indeed, to all persons concerned) as in an American trial. He has, therefore, an opportunity to present a reasonably good exposition to the jury; I do not say argument, because argumentation is a rare quality to be seen in the French court, due to various reasons, especially due to the fact that a great many defendants admit their guilt and the whole case for the prisoner is based upon extenuating circumstances. French lawyers are strong in exposition and form; American lawyers are strong in argument and the discussion of evidence.

We have in America no state civil legal aid. The French have a method of judicial assistance for people who have no means of prosecuting a civil action. Theoretically, the French system is better. As a matter of justice, the state should give an opportunity to poor persons to seek the justice which they believe is due them. Even in America in spite of a great many drawbacks I should advocate state aid for civil actions. But a process of education should be instituted immediately—education of the public. This is very easy to say, but very hard to do. The form is an amorphous one and gigantic in America, and the problem is one of the most difficult in the world to solve, not only because America is America, big and unassimilated, but also because it is a democracy. But although a great deal can be said against the office of District Attorney, in that political henchmen are put into places there, and although a great deal might be said against a civil state aid department, where people who wanted to prosecute civil actions might go for relief, it would be an advance just the same, and in time we might hope to have better public servants.

A possibility is to have state aid in which the judge of the court where the action is to be brought might appoint counsel. But here a great many difficulties will immediately arise. Judges are given lists by their political bosses, from which the judges select the nominees. This selection would be done under all the more pressure if the appointees were paid. It seems to me that an attorney should get a nominal sum at least, but the appointing power should be the president of the bar association of each county. We shall have other problems arising in such a case, but I believe they will not be as grave as those which will arise if the appointment is made by a judge, unless

the appointees receive no remuneration. In this case there should be a public spirit in the bar which would make it possible for all its members, young and experienced, insignificant and distinguished, to be eager to serve in either civil or criminal actions. In Paris, the *bâtonnier* has a list of individuals who are willing to serve in criminal actions. Young persons and experienced persons are on that list. A spirit similar to that must be infused into the bars of our large cities, and the appointment that is then made from this list by the judge of a criminal court would be perfectly satisfactory.

I said above that, theoretically, the state civil aid system in France is excellent. But we must judge a system by its operation in practice, rather than by its appearance on paper. Take the case of divorce, for instance. This is a very important matter which is often coming up in the courts of justice. A person may, by applying to the proper authorities, receive permission to prosecute an action for divorce, but the procedure is so involved, so long drawn-out, and the possibilities of failure are so great that very few people are satisfied with the results. I have had conversations with several men who have had experience in the matter, and I have been told that there is a great deal of injustice done by delays and by elaborate procedure. I have heard an attorney, in a speech in court, who was defending a prisoner for murder, detail the intricacies and the annoyances which must be undergone by an individual who wishes to prosecute an action for divorce. If we had a State Civil Aid System the delays and injustices would be worse, perhaps, due to our generally inefficient public servants, and to political intrigues.

This matter of civil justice I have referred to, not because I wish particularly to give certain information concerning the French system, but because it has a vital relation to criminal law. The District Attorney in summing up in cases of the *crime passionnel*, sometimes uses the argument that there could have been a reason for the committing of the crime when there was no possibility of getting rid of the spouse, but that when the law for divorce came into existence the reason for the *crime passionnel* ceased to exist. But in order to answer a further objection on the part of the attorney for the defendant, he would very likely say that the defendant was too poor to get a divorce. The District Attorney brings out the point that a divorce can be got free of charge. But the argument made against the District Attorney is perfectly clear, and with the jury perfectly sound. Yes, you have divorce; yes, you have free prosecution of an action for divorce; yes—but what is the use of these

to an individual who has to go through all that a person has to go through and to wait one year and a half before the final judgment is obtained—when the final judgment may be against him? I witnessed a very interesting case not long ago. A soldier had come from the front because he had been informed that his wife was unfaithful to him. He had a scene with her, and after that he went to the office of the *bâtonnier* to obtain advice concerning his future course. Since the beginning of the war there has sprung into existence in the office of the *bâtonnier* a bureau of free consultation, which is open every day. Before the war it was open only once and sometimes twice a week. The soldier was told of the difficulties in his way and the length of time it would take him, and particularly of the fact that, during the pendency of the action, the wife would be receiving alimony and support from the government, and, furthermore, that if he should die, the pension would be received by his wife and that his children would receive only what the mother would, in her discretion, allow. Her discretion would have been used against the children, because she had already abandoned her husband and children for a lover. In spite of these difficulties, the soldier directed that an application be made for the prosecution of an action for divorce. He went off to the front. Letters kept on coming to him, telling him how much he was being dishonored by his wife, and how his children had been abandoned completely by her. All this operated upon his mind. The final sting came when he received a notice that his application for the prosecution of the action for divorce had been rejected. He had considered the evidence of his wife's unfaithfulness perfectly clear. He had witnesses to the fact. The attorney whom he had consulted had told him that the evidence was more than sufficient. He was so disturbed that he deserted from the army to come to Paris for the purpose of doing justice with his own hand. Delayed justice is injustice.

The obtaining of easy civil justice has a relation not only to the *crime passionnel*, but to a great many other crimes. The perfection of the system of obtaining civil justice will bring about a diminution in crime.

THE HOUSING OF PRISONERS

F. EMORY LYON¹

In considering the subject of prison building, I wish to approach the matter neither from the standpoint of the average prison keeper, to whom custodial security is apt to be the end and aim of a jail, nor from that of the architect, usually bent upon technical reversion to type and the injection of artificial elements for a presumably abnormal population and method of living. Let us consider the theme rather from the social point of view; the factors essential in fitting men for freedom; and also from the viewpoint of the occupants of prisons, so far as we may be able to interpret their feelings and desires.

The student of this subject is confronted first of all with the paucity of material to be found in books, printed reports or authoritative standards for guidance. There is very little literature in this field, especially in English, and what there is seems to be of almost ancient vintage. Our information must come, therefore, from fragments of reference to the matter incidental to the treatment of penal progress and administration, and from the still more general results of wide observation and experience.

As a matter of fact it is both suprising and discouraging to find that so little originality, inventiveness and human ingenuity has been displayed in this important field. As a result, history has repeated itself again and again in a return to the ideas and forms of prison construction which a previous generation had discarded. Perhaps the reason for this may be that man was never intended to be a caged animal. If so, it could hardly be expected or desired that an unnatural, unscientific thing should become a permanent and standardized reality. At any rate a satisfactory method of imprisonment has never been reached, even though, thus far, it has seemed to be necessary.

That society is beginning to see the possibilities of a better way of dealing with delinquents through probation and parole supervision is quite certain. The same principle of individual rather than congregate treatment has gained considerable foothold in the extension of the honor system, farm and road work, the penal farm and dormitory system, etc. Whether these methods, now in their experi-

¹Superintendent of the Central Howard Association, Chicago. Associate Editor of this JOURNAL.

mental stage, will one day entirely displace stone walls and iron bars is a question for the future. Thus far, less than ten per cent of the prison population of the United States is serving sentence under the open sky, and a greater extension of the system seems to result in a geometrically increasing number of escapes.

Whether it is because we have taught men to depend upon the old method, therefore, or whether we lack sufficient faith in the new, prison buildings appear to be essential for the protection of society as well as to save men from their own weaknesses. Whether such structures should be strictures upon men's natural methods of association and communication; whether they should save space and expense or save men; how far classification of quality without caste distinction may be affected, are problems for the state, the architect and the administrator to determine.

It is hardly necessary to state that nearly all prison buildings of the past have been wholly lacking in those elements of construction that permit of adequate light and air, proper classification of inmates, and opportunity for the improvement of the occupants.

Thus far only three general types of prison construction have apparently ever been conceived by the human mind. All of these types are now in use, and in each case, they are the survival or imitation of similar institutions proposed or produced in previous centuries. Thus, the prevailing plan, followed in the building of county jails, work-houses, and nearly all state penal institutions, of a central cell-block, with two rows of cells, facing an outer wall, with a corridor between, has persisted ever since the abandonment of the underground prison in the latter part of the sixteenth century and the early part of the seventeenth.

The advantages of this method of housing prisoners have been as follows: Compactness, providing for a large population in small space; convenience of arrangement for service pipes and forced ventilation between rows of cells; considerable degree of privacy for the inmate, since each cell looks out upon a blank wall rather than into another cell.

The plan has not afforded adequate ventilation, since no direct light and air can penetrate the cell. Supervision can be exercised only periodically rather than constantly. This form of prison is suited only to the congregate method of dealing with prisoners, rather than the more desirable individualization of treatment. It would be easy to cite "horrible examples" of this form of prison, as the dark unwholesome ones are greatly in the majority and have done untold injury to the

health, morals and manhood of countless victims. I prefer to point to three of the best examples of this form of prison construction; namely, the city prison at Memphis, Tennessee, the County Jail of Marion, Indiana, and the State Prison at Stillwater, Minnesota.

A variation from this uniform type of cell-block, having individual cells with bars and a door inclosing the inmate, is found in the Military Prison at Fort Leavenworth, Kansas. In one cell-block in that institution, built of concrete, there are the same partitions for individual cells, but each is open across the front, so that the men are upon their honor and at liberty within the limits of certain rules, while bathing and lavatory facilities are at the end of the cell-block. Another building with the same interior open cells has partitions at intervals of twenty or thirty feet, each space containing cots for six or eight men.

A second form of prison building, of more recent development, but no less ancient origin, is that with a central corridor with cells on either side, and with the windows of each cell opening directly to the outer air. The first structure of this type is found to be a part of the Hospital of St. Michael, founded at Rome in 1704, by no less a personage than Pope Clement XI. The hospital was for both dependent and delinquent boys. The latter class, composing one-fifth of the population, were housed in outer cells as described, built in tiers, one above another, as in the case of the central cell-block. The Eastern Pennsylvania Prison at Philadelphia, one of the earliest American prisons, still in use, is built on this plan, though a one-story structure, and with large cells or rooms, but a narrow corridor between.

No other examples are found in recent years, except in the old county jail at Buffalo, and one at Mansfield, Ohio. A model cell-block of this kind may be seen at the Chicago House of Correction; the new county jail at Buffalo, and a cell-block at the Michigan State Prison at Jackson, with large dormitories, each containing ten or twelve inmates, instead of single cells.

The same principle of outer cells is observed in the plans for the new prison now being erected at Joliet, Illinois, though with a unique variation. Here we find eight circular cell-block units, surrounding a central dining hall. Although this form of building has not previously been erected, a similar plan was proposed by Jeremy Bentham in a book written about 1778.

The advantages of the interior corridor and outer windows are found in the better opportunity for sky-lights and direct light to the cells. Whether better ventilation is secured depends, of course, upon

whether the inmates are required to open the windows, and upon their being opened freely while cells are unoccupied.

European delegates to the International Prison Congress in 1910, objected to the inside corridor because it facilitated communication between prisoners. This criticism was based, however, upon the supposition that solitary confinement, as followed in Europe, is the most desirable method of imprisonment.

The third general type adopted for the housing of prisoners is found in the Dormitory and Cottage Plan. The Cottage System was first used for juvenile offenders in Hamburg as early as 1833, while a similar school was established at Hart's Island, New York, in 1867. Many similar institutions have since been developed in the various states, including our own St. Charles School for boys. This form of housing has been widely used in Europe in the famous farm colonies in Switzerland, Denmark, Holland, Germany and elsewhere, but only for petty offenders rather than felons.

The dormitory form of housing has more generally and more recently been developed in this country. The well-known dormitory colony of the District of Columbia at Occoquan, Va., was among the first, but has been followed by similar institutions at Guelph, Ont., Greencastle, Indiana, and elsewhere. Stone walls and iron bars are entirely eliminated from these institutions as in the case of the cottage plan. Modifications of this "wide open" method of housing may be cited at Comstock, New York, where the prison wall is dispensed with, but the inmates are confined in cells at night; and in various prisons of the Central West, where the interior cell-block has been torn out, and rows of cots are placed within the outer wall, with no separation of the several occupants.

This method of congregate housing is admittedly an experiment and officials differ widely as to whether it will ultimately prove helpful or harmful to prison inmates.

I have thus attempted to describe briefly the limited forms of housing thus developed for prisoners. It is not to be presumed that any of these forms are final, and new ideas are apparently badly needed in this field. Unless and until we are able to dispense with prison buildings altogether, it seems to be certain there is vast room for improvement upon all ideas heretofore advanced and formulated in stone, concrete and steel. It is easy to see that the trend has been toward the development of provision for smaller units, and better classification of prisoners. Just how this may be further accomplished both in our present structures, and in the discovery of a better system, let us now consider.

There are several things in this connection which may be taken for granted. That prison buildings should be substantial, provide for ample light and fresh air, and furnish all the facilities for personal cleanliness, can be assumed. It is neither good economics nor good public policy to house prisoners in such a way as to destroy their self-respect or their physical vigor.

The fact that many prison inmates have previously lived in filth by choice or neglect is no reason why the state should force them so to do. On the contrary it cannot afford to permit them to do so, and their incarceration affords the best opportunity to teach them better habits.

But physical comforts should not be the chief consideration in the housing of prisoners. Heretofore these have been the chief factors to be given attention in assembling groups of men, whether in prisons or in armies.

But the psychology of the situation, it seems to me, is of vastly more importance. No estimate has ever been made as to the effect of solitary confinement, or even of forced custody, upon the mental machinery and attitude of the victim. Possibly the nature of the case is such that no such measurement could be taken. Stories have come down to us of men going insane by reason of being under the constant scrutiny of an eye. A recent writer has expressed his belief that no man could ever be the same again after spending a single night behind iron bars. While this may be an extreme view, we may well presume that no one could languish for twenty-four hours in the fetid, unwholesome atmosphere of most police stations and many county jails without the awakening of rebellion against society, even if not the arousing of latent criminal impulses.

On the other hand, in speaking of the use of open dormitories I have stated that observers are uncertain as to the ultimate effect upon the minds of men. Apparently the complete lack of privacy and opportunity for the relaxation, which privacy alone affords, makes this experiment a debatable one at best.

Just at this time our own State of Illinois has an exceptional opportunity to work out the best methods known and to originate still better plans. The state commission for building the new Joliet prison has already begun operations, but fortunately the plan adopted lends itself to variation from the contemplated provisions. As previously stated, the plans provide for eight separate cell-block units. While these are to be of modern construction with ample light and provision for ventilation, yet all are to be cell-blocks, nevertheless.

While prisoners may be classified in the different units, yet the plan affords no chance for those inmates who do not need to be housed in cells at all.

It would seem there is no good reason why several of the units should not take a different form. For instance, two cell-blocks accommodating two hundred fifty each, would, doubtless, provide for all for whom separate cells seem to be required. Two others might be of the open dormitory type, until such time as they shall prove to be inadvisable. With the demonstrated possibilities of trustworthy prisoners, two may well be built very much like any college dormitory, with separate private rooms. The remaining units, as needed, could be of the cottage variety, found in the modern industrial school.

This proposal would accommodate itself to the original plan, while giving opportunity for a more marked and intensive classification of the prisoners, and a greater variety of treatment. May we not hope that the new State Department of Public Welfare, with its more centralized control of correctional institutions, shall make possible the best-known methods of housing the prisoners of Illinois.

Better still, may it discover a way, with the prospect under Penal Farm Colonies, and otherwise, to care for its derelicts under the open sky, and that soon stone walls, coops, cages, shackles, and iron bars shall be obsolete for human beings.

For may we not say, in general and in conclusion, that more and more people believe that prisons should be hospitals for sick souls, and correctional colleges for the education of undeveloped minds, rather than soulless dungeons for human bodies, or schools of crime, where "evil communications corrupt good manners."

Perhaps the golden rule test prescribed by a certain Quaker woman is, after all, the best standard for our ideals in the future. This good woman, in the course of a report on French prisons, uttered this sage maxim to the King and Queen: "When thee builds a prison, thee had better build with the thought ever in thy mind, that thee or thy children may occupy the cells."

COURTS OF DOMESTIC RELATIONS¹

(Report of the Committee of the National Probation Association.)²

CHARLES W. HOFFMAN, *Chairman*

The recommendations herein made by your Committee received the unanimous approval of all present at the meeting. It is conceded by the judges, by probation officers, and by social welfare workers in kindred lines of social service activity that "the unit of society is not the individual, but the family, and whatever tends to undermine the family by irrevocable laws of nature will crumble and destroy the foundations of society and the state."

Prof. Albion Small declares that "the family is the mechanism which delivers over to the nation the raw material, or the partially improved material, out of which the nation must be composed, the adolescent individual."

If there is dissension in the family, if there is absence of sym-

¹Presented at the Pittsburgh meeting of the Association, May, 1917.

²The membership of the committee is as follows:

Hon. Charles W. Hoffman, Judge, Court of Domestic Relations, Cincinnati, O.,
Chairman.

Hon. Edward J. Dooley, Judge, Court of Domestic Relations, Brooklyn, N. Y.
Mrs. Jane D. Rippin, Chief Probation Officer, Municipal Court, Philadelphia, Pa.
Mr. Monroe M. Goldstein, Secretary, National Desertion Bureau, New York
City.

Mr. Wm. H. Bailey, National Prison Association, New Haven, Conn.

The following workers in social fields, on invitation of Mr. Charles L. Chute,
Secretary of the Association, shared in the deliberations of the Committee:

Mr. Wm. H. Baldwin, Washington, D. C.

Mr. Edwin J. Cooley, Chief Probation Officer, Magistrates' Courts, New York
City.

Mr. Frank L. Graves, Probation Officer, Domestic Relations Court, Brooklyn,
N. Y.

Mr. Patrick J. Shelley, Probation Officer, Domestic Relations Court, Manhattan.

Mr. George Everson, Secretary, Criminal Courts Committee, Charity Organiza-
tion Society, New York City.

Miss Maud Needham, Investigator, Criminal Courts Committee, Charity Organ-
ization Society, New York City.

Mr. Arthur W. Towne, Supt., Society for Prevention of Cruelty to Children,
Brooklyn, N. Y.

Mr. Morris D. Waldman, Executive Committee, National Desertion Bureau,
New York City.

Mr. George P. Richter, Clerk, Court of Domestic Relations, Manhattan.

Miss Ida M. Curry, Supt., County Agencies of the State Charities Aid Asso-
ciation, New York City.

Mr. Hiram Myers, Association for Improving the Condition of the Poor, New
York City.

Mr. Charles L. Chute, Secretary, National Probation Association, Albany, N. Y.

pathy, forbearance, self-control, and other necessary elements incident to the development of character; if the social reciprocities are not cultivated, then the members of the family will be characterized by anti-social conduct in their relations, not only with the members of the family itself, but with the members of the community with whom they may come in contact.

The causes of juvenile delinquency, dependency of children, desertion and non-support, pauperism, alcoholism, divorce and marital dissensions are inter-related. All these, in a measure, can be traced to some defect in the family, and that defect in many instances is so obscure that current methods of dealing with domestic relations fail to reveal them.

It is apparent that to deal with the family effectively, to relieve present distress and to ascertain the causes of disruption of the family and the causes of anti-social conduct in general, it is necessary that some court have the power to deal with the family as a unit. At present the various phases of the family life are considered by independent courts, and while these courts have accomplished much good and should be commended, yet their work in no way has been inter-related.

It may be stated that the Court of Domestic Relations of Hamilton County, in which is located the City of Cincinnati, is somewhat exceptional in this respect. This court has jurisdiction in all divorce and alimony matters; cases of desertion and non-support, and all matters coming under the Juvenile Court Act. The court has been in existence since January, 1915, and the work has indicated clearly that the co-ordination in one court of these phases of domestic relations has been exceedingly efficient in the prevention, as well as the investigation into the causes, of anti-social conduct.

In practically all the states, Courts of Record have jurisdiction in cases of divorce, alimony, failure to provide, desertion, and paternity or bastardy cases. Other courts, usually the Probate Courts, have charge of the issuing of marriage licenses, and adoption and guardianship of children.

In addition to these courts there are now, in every locality of any considerable population, juvenile courts, or children's courts, having jurisdiction in matters concerning the delinquency or dependency of children, and of adults contributing to such delinquency or dependency.

It will be observed that in all the cases mentioned in which these various courts have jurisdiction that the welfare of children is generally involved. The inability of the present juvenile courts to reach

the family, so frequently the cause of dependency and delinquency, was recognized by Flexner and Baldwin in the introduction of their book on Juvenile Courts and Probation. They declare that the Juvenile Court "in its treatment of the child has fully justified itself, though it has almost wholly failed in its treatment of the adult responsible for the child's condition. Heretofore, the emphasis has been placed on the child in court; with a wider conception of the law it will, in the future, be placed on the family in court. In short, the court will undertake to deal more effectively with the family which produces the neglected or delinquent child, who is merely a factor in the larger and more complicated problem. This change contemplates a legitimate extension of the present court's functions. It will be vested with both equitable and criminal jurisdiction and will deal with all charges against minors, with neglected children, and all cases such as divorce, adoption, etc., in which the custody of children is in question. It will likewise embrace within its jurisdiction all violations of law where children have been wronged, such as child labor laws, and compulsory attendance laws. It follows as a matter of course that it will have exclusive jurisdiction over all cases of adults who contribute in any way to the conditions of delinquency or neglect in children."

The extension of the scope of activities of the Juvenile Court as thus suggested would supersede or rather take over the work of our present Courts of Domestic Relations with their various special functions, and, therefore, the term "Courts of Domestic Relations" would not be sufficiently comprehensive to include functions of the new court. The designation of these courts as "Family Courts" would probably more clearly signify the work designed to be accomplished by these institutions, viz., the conversations of childhood.

It is apparent, too, that the combining in one court of all matters concerning the family, such as have been mentioned, would be beneficial to society from the economic viewpoint. Much of the costly legal machinery now necessary in the operation of independent courts could be abandoned, and a great number of court attaches, whose services are merely formal, could be dispensed with or their activities directed to more useful purposes.

The foregoing considerations impelled the committee to present to this Association for its consideration the following resolutions:

Be it Resolved, That the National Probation Association recommends that the courts that are at present organized under the name of Domestic Relations Courts and Juvenile or Children's Courts be organized under the title of "Family Courts," and that such other courts be established.

That the Family Courts be given jurisdiction in the following classes of cases:

- (a) Cases of desertion and non-support.
- (b) Paternity cases, known also as bastardy cases.
- (c) All matters arising under acts pertaining to the Juvenile Court, known in some states as the Children's Court, and all courts however designated in the several states having within their jurisdiction the care and treatment of delinquent and dependent children, and the prosecution of adults responsible for such delinquency or dependency.
- (d) All matters pertaining to adoption and guardianship of the person of children.
- (e) All divorce and alimony matters.

That these courts be under the direction of a single judge, except in such jurisdictions where the work of the court is so great as to require more than one judge for the convenient and proper disposal of the matters coming before the court. That in these cases the court have special divisions, to which are assigned certain classes of cases; the court as a whole to be under the supervision and direction of a presiding judge.

That such courts be provided with ample probation departments, upon which shall be conferred power to make all necessary investigations, medical, pathological, social, psychological or otherwise as shall be considered necessary, and that, in pursuance of this work, there be provided psychopathic laboratories sufficiently equipped to conduct the necessary scientific investigations.

That in the conduct of the work of the probation department no probation officer shall have under his charge, direction and probation more than fifty cases at one time.

That all moneys decreed for payment of alimony or for the support and maintenance of children by delinquent fathers or mothers, shall be paid into the court, and that no private institution or organization be invested by law with authority to receive money or take charge of cases requiring probation except under the direction of the court.

That all cases involving children and intimate family relations be conducted as privately as possible, consistent with the law and the constitutional rights of the individual, and that publicity concerning abnormal family conditions be discouraged.

That the procedure in the Family Courts be informal and summary so far as it may be consistent with positive law, and that such equitable, as well as criminal, jurisdiction be conferred on the courts as will enable them to deal with all cases so as to effect the adjustment of individual and family conditions without legal formality or delay.

MORPHINISM AND CRIME

L. L. STANLEY¹

Within recent years the question of morphinism and its relation to social problems has become of great interest and has attracted the attention of the world. Whereas, a decade or two ago the evils of the use of opium and its derivatives were recognized, only recently has this evil been feared and drastic measures taken to eradicate it.

In 1906, China, in which country the peril gripped most tenaciously, realized the demoralizing effect of the drug and decreed that traffic in opium must stop. Although China's efforts at enforcing this decree are energetic and have produced good results, still the traffic is carried on secretly to a very considerable extent.

LEGISLATURE RESTRICTION

The state governments in America, through their state boards of pharmacy, have been quite active in dealing with this curse. In some states the illegal trafficking in opium or morphine has been declared a felony and a number of convictions have been secured.

The federal government has imposed a very heavy* import tax on all opium brought into the country. This tax has caused the price of the drug to soar and has opened up new fields for crime, first by creating the necessity for smuggling, and, secondly, by so restricting the use of morphine by those afflicted with the addiction that they commit burglaries and other crimes to secure the necessary means for purchasing their drug.

The latest federal legislation relating to the production, importation, manufacture, compounding, sale, dispensing or giving away of opium, or coca leaves and their salts, derivatives or preparations, is the so-called Harrison law recently enacted by Congress, and which became effective on March 1, 1915. This requires the registration, with payment of a special tax, of all persons who deal in these drugs in any way, and makes failure to adhere to these requirements unlawful. It also declares unlawful, the possession or control of the afore-said preparation by persons not so licensed unless otherwise provided for in this act. Section 9 declares that any person who violates or fails to comply shall, on conviction, be fined not more than \$2,000.00 or be imprisoned for not more than five years, or both. With this act, therefore, another cause of crime with relation to morphinism is established.

¹Resident Physician, State Prison, San Quentin, Cal.

DISCUSSION OF CASES

Within the past three years, at San Quentin penitentiary, over 100 prisoners have been received who admitted verbally or by their actions that they were confirmed addicts to opium in some of its forms. As soon as these addicts are received at the prison they are measured and photographed according to the Bertillon system, and are then turned over to the medical department for examination and treatment. Most of these men have just come from the various county jails where they had their potion, which usually suffices them until they reach the penitentiary. By this time the so-called "habit" is coming on and the habitue is a pitiable sight. After obtaining from the patient his method of administration and the amount he usually takes, the required dose to ease him is given, and soon his normal attitude and behavior returns.

It is at this time that information regarding his addiction and its relation to crime, in greater detail, is brought from him. All of his answers to the questions asked him are carefully written down, and later tabulated and studied with the purpose in view of learning more about this dreadful affliction.

One of the first questions asked is as to the age at which he commenced the use of "dope." Of the one hundred so questioned:

- One, or 1%, began at eight years;
- One, or 1%, began at thirteen years;
- One, or 1%, began at fourteen years;
- Three, or 3%, began at fifteen years.

It is seen that approximately six per cent began when they were mere children, before they had completed the grammar grades.

- Eight commenced at sixteen years;
- Six commenced at seventeen years;
- Fourteen commenced at eighteen years;
- Nine commenced at nineteen years;
- Eight commenced at twenty years.

Forty-eight began the use of "dope" between the ages of fifteen and twenty-one years. Including the three who commenced before fifteen years it is shown that 51% or over one half of the addictions of this series are formed before the youth reached his majority.

- Five began at twenty-one years;
- Five began at twenty-two years;
- Eight began at twenty-three years;
- Four began at twenty-four years;
- Two began at twenty-five years;

Thus in early manhood, between twenty-one and twenty-five years, twenty-four first succumbed to this evil.

From twenty-five to thirty years twelve began its use, and in the next decade, from thirty to forty years, a like number. After the age of forty, no addictions were formed in this series of cases.

It is seen by these figures that morphinism is usually acquired before the youth is normally away from the guardianship of his parents, and at a time when he should be guided by better influences. It is the time when his mind is relatively plastic and easily moulded.

The second question asked is: "What kind did you use first?" In answer to this, it was learned that fifty-eight began by smoking opium, twenty per cent used morphine hypodermically, eight ate morphine, three ate "yen shee," the ashes of opium, and the remaining cases started by using cocaine and laudanum, or eating opium. This shows that the greatest danger lies in the smoking of opium, for most commence in this way.

Contrast to this the answers to the questions as to the kind they used last:

Forty-eight use morphine by syringe;
Eight take morphine by mouth;
Twenty-eight per cent use both morphine and cocaine;
Three still smoke opium.

Others use morphine by mouth and syringe together, according to circumstances, while some take heroin and laudanum. In fact, after the habit is well formed, an addict will take anything he can get his hands on.

This shows that although the majority started their addiction by smoking opium, they subsequently changed to using morphine by the hypodermic syringe.

Of course, it is difficult to obtain accurate statements from the addicts as to the amount of drug they use. Some do not know the quantity they take and others use as much as they can secure.

Eighteen per cent admit less than five grains a day;
Thirty-two per cent admit five to ten grains a day;
Thirty-two per cent admit ten to twenty grains a day;
Six per cent admit twenty to thirty grains a day;
Six per cent admit thirty to forty grains a day;

Four per cent claim to use over sixty grains a day, when they can obtain it. When it is realized that one-fourth grain is the adult dosage, it is seen how a tolerance for the drug may be created, and what enormous amounts may be taken without fatal results.

A natural inquiry has reference to the occupation engaged in by these persons when they began their addiction. Of the one hundred, seven each were waiters and sailors, six were tailors, five each were messenger boys, porters and laborers, while four each were showmen, race track followers, prisoners, teamsters, and school boys. Bartenders, gamblers, bookkeepers, cooks and idlers numbered three each. This is as to be expected; seamen, adventurers, actors, gamblers, race track followers; for the most part, the lower stratum of society. Waiters, tailors, and men of like occupations, after a hard day's work, seek relaxation in the peaceful pipe with their associates of like inclinations.

Knowing the relatively tender ages at which this habit is formed, it is of interest to find out just how the use of dope was begun. To this question there were a great many answers.

Fifty, or one-half, began by associating with bad companions at night, frequenting dance halls, saloons, poolrooms, and later "joints," where they were induced to try the pipe. Very few who ever try the pipe have will power enough to refrain from doing the same thing again at some future date when they are importuned to do so by their evil associates. Fifteen per cent were induced and educated to this addiction by women of the underworld, who perhaps took a fancy to the young man and persuaded him to go with her to indulge in this insidious vice. Eleven claim that they learned to smoke opium in jails and penitentiaries.

In the not far remote periods of the two California penitentiaries it was not difficult to have opium smuggled inside the walls, where men not cured of their addiction would use the drug and induce younger prisoners to be "sports and take a shot." At the present time, however, a close watch is kept at the prisons and no contraband is allowed to enter. But at the county jails no such rigid vigilance is in force, and it is said by the prisoners who have come from those jails, that it is a very easy matter for any one who has money to have the drug brought to him. It is in those jails that many a young man is induced to become an addict to this habit because he wishes to show his toughened cell mates that he can be as bad a man as any of them.

Sixteen others claim that they began the use of dope on account of various sicknesses, such as rheumatism, accidents, syphilis and other forms of disease in which there was a high degree of pain. In some of these cases, it might have been the fault of the physician or

of the nurse that the patient found out what he was receiving for his pain and in this way led him on to his addiction.

One patient examined at San Quentin began by taking paregoric for stomach ache, with which he was troubled to a considerable extent. He was given this by his mother when he was at the age of seven years. From this frequent dosage he acquired the habit, the persistence in which finally landed him in jail. A second addict stated that when he was in high school in a certain town in Nevada, it was a fad among the boy and girl students to visit Chinatown regularly, where they smoked opium. Another told that while in the Alaskan fisheries, he, with a number of other men, was given morphine to stimulate him to greater efforts and to work at higher tension so that all of the fish might be taken care of in a limited time without pecuniary loss to the company. At the end of the season, he was, with a number of other men, a confirmed addict.

Messenger boys in large cities are especially susceptible to falling into this habit. One of their chief means of income is derived from female outcasts of the under-world, who send them to obtain the drug. With these associates it is not difficult to be led to the addiction.

The longest period over which any of the hundred had been using morphine was thirty years, and the shortest was eighteen months, with an average of thirteen years.

EFFECTS OF THE DRUG.

Having found out something about the formation of this habit, it is well to know something more about the physical effects produced by the continuous use of this drug. The question is asked: "What are your sensations when you are deprived of dope?" When a drug fiend is deprived of his potion and feels that he must have relief at any price, he will state his condition as that of having a "habit." When a "habit" is coming on, a patient is a most miserable and pitiful sight. He suffers from extreme nervousness, inability to sleep, cold sweats alternating with fever, hot and cold flashes, nausea, head-ache, vomiting, hiccough, diarrhoea, weakness and prostration, cramps in the muscles of the legs, as well as terrific pains in the bones of the whole body, pain in the back of the head and in the eye-balls, with a high degree of lachrymation. Others complain of a sense of cold in the head, a gnawing sensation in the pit of the stomach, rheumatism and melancholia. To some the drinking of water is like the taking of caustic, food tastes like foul medicine, and the teeth become sore and tender. Others claim that they are drowsy, but are in such torment

that they are unable to sleep. They have unnatural emissions, while others are unable even to urinate.

One addict describes his case thus: "Too weak to walk and too nervous to lie down," "case of climb a wall if you could," "or break down a door to get it with no other thought in mind than to secure relief." One said that he had an exhausted feeling which left him so miserable that he would look upon death as a godsend. Others imagine every moment to be their last and state that to be deprived for a short time of the drug, they will age ten years in a single night. Realizing that the victims of this habit undergo such horrible torments and terrible sufferings, can one hesitate to doubt that crimes are committed to procure the drug which will temporarily relieve them?

Contrast, if you will, the foregoing with the feelings of the dope fiend when he is under the influence of his opiate. He "feels normal," "at peace with the world," "has relief from pain and discomfort and a sense of well being," "a tendency to look upon the bright side of things," "feels the blood rush from lower limbs to face, feels warm and needs no overcoat," "the world is yours and you care for nothing," "feels as though had just taken five or six whiskys." Adjectives describing this feeling are, "fine, dandy, energetic, talkative, contented, warm, not irritable, and satisfied." Knowing this contrast and what will produce the utopian effects, who, under such circumstances, would not risk danger, disregard penalties and punishments, and jeopardize his all for relief?

Merely for medical and physiological purposes several questions are asked bearing on this phase. In reply to the question as to whether there is itching of the nose or any other part of the body, most claim that the pruritus comes on when they are under the influence of the drug, although ten per cent claim to have no itching at all, and fifteen per cent have it when they are in need of the drug. Almost all addicts claim that they sneeze excessively when the "habit is coming on," that is, when they are in need of the opiate, although about fifteen per cent, either do not sneeze at all, or only when under the effects of the drug.

Regarding the appetite of the habitues, about sixty per cent claim that the appetite is fair or normal, while forty per cent say that it is poor. Fifty per cent state that sweets are craved, while five per cent are ravenous for sour foods. Sixty per cent suffer from constipation when using their drug, although thirty-five per cent have regular bowel movements, or are only occasionally costive. Some of those who suffered from constipation state that at times they have gone as long

as two weeks without defecation. The system certainly is in a highly toxic condition, loaded with this refuse material in addition to the morphine, which is being added in larger doses at frequent intervals. This clogged condition is comparable to the toxic states which frequently produce temporary insanity.

Only twenty-five per cent claim that they have dreams of any sort while using their drug, the remaining number either stating that they have no dreams at all, or that they might have a few pleasant dreams while smoking, just before falling to sleep. This contradicts the popular belief that all drug users have most wonderful dreams. Those who do dream recall most horrible adventures in which they feel that they are being strangled, being pursued by officers, escaping from prison, being burned alive, and suffering all kinds of deaths. Others have more pleasant dreams, such as that of owning the Palace Hotel, having everything that money could buy, or retaining a large number of servants who obeyed his every wish for his own entertainment. A few state that they always dream of being interrupted in administering their dope.

By some authorities it is claimed, that all sexual desires and potentialities are lost after the addiction is firmly established. Most of our group affirmed this claim and stated that their passions were absolutely dead, and that anything pertaining to sexual relations never entered their heads. A few, however, stated that by smoking opium alone their virility was greatly increased, but that a much longer time, than otherwise, was required for them to consummate the sexual act. These few say that prostitutes indulge in smoking opium extensively for this reason. It is noteworthy that those addicts who have been cured of their drug habit while in prison declare that their sexual powers have returned with renewed vigor. In connection with this phase of the question, it is remarkable, that scarcely any prisoners have been sent to San Quentin afflicted with morphinism who have been convicted of sexual crimes or crimes against nature.

A remarkable fact in regard to morphinism is that when the habit is formed, there is very little, if any, desire for spirituous liquors. Men who have been heavy drinkers have taken opium or morphine to help them over a spree, and as soon as dope had fastened its talons upon them, they had cared no more for alcohol. One man who had been a heavy drinker lost his desire for drink when he succumbed to the drug habit, but regained it after having taken a cure in one of the state hospitals. While on a spree since his cure, he committed a lewd

and lascivious act with a minor for which crime he is now serving a five-year sentence.

Considering the foregoing phases of the "dope" question, there is no doubt that opium plays a great part in crime. It is safe to say, that if opium did not have its habit-forming properties, there would be at least two per cent fewer criminals in our institutions, for of all the addicts examined, none laid the cause of his crime to anything other than "dope."

The greater number of felonies committed by "drug habitues" are robbery or grand larceny. It is when the habit is coming on with all its attendant misery that the "fiend" goes forth to procure his drug at whatever cost. They have no fear; only one object in view—"relief."

One colored addict, accompanied by a female consort, herself also a user, stole a motor-cycle in one town and wheeled it to another town five miles away, where they tried to sell it in order to purchase opium. Another addict is now serving a sentence for peddling "dope." He was a higher-up, and had many under him who disposed of the drug which he procured. He states that many of his former associates are now behind the bars.

One-half hour after having taken twelve grains of morphine, one fiend walked into the front door of a private residence in the day time, and stole jewelry and money.

A tailor, aged twenty-three, burglarized a drug store from which he took the total supply of morphine, and five hundred dollars besides.

Another "hop head," loaded with morphine, went into a room, and "frisked" the sleeping occupant's clothes of six dollars and a half.

One other addict entered a house, which was being newly furnished, and stole the new carpet, making three trips into the house to complete the operation.

Another is serving a sentence for pimping. He says that if it had not been for morphine, he would not have been pimping. His consort taught him the morphine habit.

Still another, in need of morphine, passed one cent pieces of old coinage for ten dollar gold coins. In many cases he was successful. Opium led him into crime once before when he was sentenced to prison for pocket picking.

One other who was a "twilight prowler" is now serving his third term in prison. "Had it not been for dope," he said, "I would never have been a thief."

CORRESPONDENCE

RE NARCOTIC DRUGS

Managing Editor, Journal of Criminal Law & Criminology, Chicago, Illinois.

DEAR SIR:

I take the liberty of transmitting to you herewith copy of a resolution requesting new United States statutes for the suppression of the nefarious, illegal sale of all narcotic drugs and the colossal criminal trafficking in narcotic drugs in the city and county of New York, which is within the jurisdiction of the Southern District of New York. (See p. 781).

This resolution further calls for the absolute control of the entire output of all narcotic drugs by manufacturing and pharmaceutical chemists in the United States and their possessions. It calls furthermore, for the control of all importations and exportations and the exclusive price making on all narcotic drugs by the United States Government.

As foreman of the grand jurors, United States of America, for the Southern District of New York, September-October, 1917, term, I personally drafted and prepared this resolution, which is based upon the shocking and revolting revelations and disclosures brought to my official attention as foreman of grand jurors. The resolution to be unanimously adopted by my associate members.

The aforesaid resolution I handed up October 3, 1917, to Mr Justice Robert T. Ervin, presiding in the United States District Court for the Southern District of New York, and with his honor's approval and judicial instructions officially placed it upon the files of the court.

The public press published this resolution, and action as contemplated by it was declared to be the speediest way for the immediate enactment of broad and suitable statutes that will eliminate this terrible evil, which induces *manifold crimes* and danger to the human race.

As foreman I caused, on account of the flagrant violations of the Act of Congress, approved December 17, 1914 *re* illegal sale and criminal trafficking in narcotic drugs, the indictment of several women defendants within the ages of 18 and 25 years, and over seventy male defendants from 18 to 30 years of age, mostly old chronic

offenders with criminal records and previous convictions for the same offense.

The majority pleaded guilty; others were tried and convicted and sentenced to terms in the United States Penitentiary at Atlanta, Ga., from fifteen to thirty months. The other defendants so indicted, viz., trained nurses, physicians, pharmacists and druggists are yet to be tried.

The amount of the narcotic drugs, viz., heroin, sulphate of morphia, opium and cocaine, found on and in the defendants' possession when arrested, averaged from one-eighth of an ounce, in small glass bottles, to large pound packages and over, some in original packages showing the original label of the manufacturing chemists.

Other packages were refilled and adulterated and sold unlabeled by these defendants at from fifteen to sixty-five dollars per single ounce.

A chemical analysis of such narcotic drugs as taken from all these defendants by the United States officials and forwarded to the chemical laboratory of the United States Treasury Department, Washington, D. C., demonstrated that approximately one-third of contents of refilled bottles was narcotic drugs, the other two-thirds showing adulteration with sugar of milk. The original packages were not tampered with and their analysis indicated pure narcotic drugs.

The nativity of the defendants was Greek, Italian, Russian Hebrews. All understood and spoke considerable English. The high type of defendants, some of the trained nurses, physicians, druggists, claimed American citizenship.

After their indictment and pleading, I interrogated some of the lower type of defendants and asked them why they traffic in narcotic drugs. They replied in substance, and in their language:

"It was easily got." "Mixed and doped it out." "Dead easy—the suckers came across without a squeal." "Easy work coining money."

These defendants were ill-nourished, of very low type of mentality, and they indicated criminal proclivities. Some of the women addicts who were witnesses I interrogated, stated they were manicures, typists, film actresses, cabaret singers, choristers. They attributed their physical condition to bad environment, cabaret atmosphere, other allurements, and evil associates. They claimed the physicians who treated them for a radical cure were sham and was only extorting money from them. Likewise, the druggists who compounded their prescriptions with adulterants, they said, were in league with these phy-

sicians, and a change to reputable physicians and honest pharmacists effected great relief and eventually a permanent cure. All these foregoing addicts were courteous and respectful in their replies, and impressed me as persons from good families, who had abandoned wholesome home influence and got the damnable drug habit.

The men addicts were clerks, some bartenders, and in other mercantile pursuits, who told their little tale of woe similar to the women addicts. They were gradually overcoming the drug habit, and a change to reputable physicians and pharmacists, saved them from the tortures of hell, as they characterized their feelings and past condition. Also these men addicts were above ordinary intelligence.

In the case of some of these defendants indicted, narcotic drugs to the value of \$150,000.00 were found concealed on their premises when arrested.

For many years I have served as foreman of the grand jurors of the United States of America, Southern District of New York. I find this evil increasing so that it seems utterly impossible to check it.

The learned justices of the bench and the United States attorney have given me their hearty co-operation, but the break-up of the evil can be accomplished only by carrying out the recommendations as incorporated in the resolution.

Col. Levi G. Nutt, Chief of the United States Internal Revenue Office in New York, and his efficient staff of special agents, Lieut. Henry Sherb, and Dr. Harry A. Dattelbaum, Pharmacist and Chemist, both of the Narcotic Drug Squad of the Police Department, City of New York, all deserve great credit for their effective and laborious work. Last, though not least, Edwin M. Stanton, Esq., the fearless and able Assistant United States Attorney for the Southern District of New York, who impartially presented the narcotic drug cases to the grand jurors, and so successfully prosecuted all the indictments, resulting in convictions, deserves great praise.

Very truly yours,

ALBERT J. WEBER,

Manhattan Club, New York City, New York.

October 5th, 1917.

JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE

CHESTER G. VERNIER AND WILLIAM G. HALE.

FROM WILLIAM G. HALE.

CONSTITUTIONAL LAW.

People v. Jones, 117 N. E. 417 (Ill.). *Intoxication at railroad station.*

Hurd's Rev. Statutes, 19 15-16, c. 38, par. 539, providing for the punishment of any person who drinks intoxicants, or who is intoxicated, in or about any railroad station or platform, is not violative of the Fourteenth Amendment of the federal Constitution, or the Constitution of Illinois (Art. 2, sec. 32, 11) as establishing an arbitrary classification or the provision (Art. 4, sec. 22) against the passage of local or special laws. The Court cannot say that making a distinction between intoxication at railroad stations and elsewhere is arbitrary. It was the judgment of the Legislature that there was a reasonable distinction between the two. The Court quotes from *Missouri, Kansas & Texas Ry. Co. v. May* (194 U. S. 267) as follows: "When a State Legislature has declared that in its opinion policy requires a certain measure, its action should not be disturbed by the courts under the Fourteenth Amendment, unless they can see clearly that there is no fair reason for the law that would not require with equal force its extension to others whom it leaves untouched. * * * Great constitutional provisions must be administered with caution. Some play must be allowed for the joints of the machine, and it must be remembered that Legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts."

DISPENSING DRUGS.

People v. Hoyt, 166 N. Y. S. 953. *Construction of statute. Delivery of heroin by physician to patient's agent.*

The defendant, a physician, was convicted of violating the Public Health Law, sec. 246, as added by Laws 1914, c. 363, and amended by Laws 1915, c. 327. It was held, in reversing the case (1) that the physician is not required by the law to examine his patient each time anew before supplying him with a narcotic drug as a medicine, an examination within a reasonable time before being sufficient, and (2) that it is not a violation of the law to deliver the drug to the patient's agent—in this case the patient's wife.

DISORDERLY HOUSE.

Commonwealth v. La Pointe, 117 N. E. 345 (Mass.). *Construction of the statute.*

The defendant was convicted of knowingly permitting a building under her control to be used for purposes of prostitution. The complainant in the case had charged that the defendant "did knowingly permit" the building to be used for such purposes. The Court instructed the jury that if the defendant rented the premises, with knowledge that they were to be so used, they might find the defendant guilty. The statute under which the prosecution was

brought provided for the punishment of one who owns or controls a building and (1) knowingly lets it to be used for purposes of prostitution, or (2) knowingly permits it to be so used, or (3) after due notice of such use omits to eject the tenant. *Held*, that the instruction given was erroneous since it permitted conviction under the first provision of the statute, whereas the defendant was charged specifically with the violation of the second provision. The acts specified are separate and distinct, and one does not include the other and by virtue of constitutional guaranties, "No subject shall be held to answer for any crime or offense, until the same is fully and plainly, substantially and formally, described to him."

EVIDENCE.

Patterson v. State, 117 N. E. 169 (Ohio). *Larceny of automobile. Proof of other thefts.*

Defendant was indicted for stealing the automobile of one W. as the aider and abettor of one X. The evidence showed that defendant and X. were co-operating in the business of stealing automobiles. Testimony was given and objected to that they had also stolen the car of one C. The objection was based on the ground that defendant had previously been tried and acquitted of the charge of stealing C.'s car. *Held*: This evidence properly received. The stealing of all the cars referred to, including C.'s car, was part of a common scheme or plan. Testimony concerning the theft of C.'s car does not violate defendant's right not to be put in jeopardy twice for the same offense.

LARCENY.

People v. Bremreauer, 116 N. Y. S. 801. "*Possession.*" *Variance.*

The defendant was a salesman for the Gurney Ball-Bearing Company. Before leaving the company's employ, he took from the office certain valuable blue prints. Upon an examination of the evidence it was held that the defendant at most had the "custody" of the prints, while the "possession" was in the master, and that where the defendant carried them away with felonious intent he had committed the crime of larceny at common law. It was also held that since the indictment charged the defendant with common law larceny, he could not be convicted of larceny by false pretenses or by embezzlement under the Penal Law, sec. 1290.

MANSLAUGHTER.

People v. Falkovitch, 117 N. E. 398 (Ill.). *Involuntary manslaughter by reckless driving of an automobile.*

The defendant was charged with "unlawfully, feloniously, recklessly, and negligently" driving "motor-vehicle" over the deceased. The accident happened on one of the main thoroughfares of the City of Rock Island. The rate of speed was stated to be 25 miles an hour. Three grounds of error were alleged: (1) That the lethal instrument was not described with sufficient definiteness; (2) that the killing was not alleged to have been wilfull, and (3) that there was a failure to set forth the specific acts relied upon as constituting the crime. The judgment of conviction was affirmed.

The following points made in the decision are of interest: (a) "There are no words or special provisions of our statutes with reference to manslaughter, either in the definition of the crime itself or elsewhere in the statute. that

require that the indictment shall charge that the killing was both felonious and willful, although it is common practice to employ both words in drawing indictments."

(b) "Motor vehicle" is a proper designation of an automobile. The instrument of harm need not be more specifically described.

(c) It is provided by statute that "No person shall drive a motor vehicle or motor bicycle upon any public highway in this State at a speed greater than is reasonable and proper, having regard to the traffic and the use of the way or so as to endanger the life or limb or injure the property of any person."

It is further provided in the statute that a rate of speed in excess of 10 miles an hour in the business district or 15 miles in a residence district of a city or village shall be prima facie evidence of unreasonable speed.

It was error for the Court to instruct the jury that proof of a rate of speed in excess of that prescribed by statute would be proof of negligence, since by the statute it is made only prima facie negligence. But it was harmless error, because it was otherwise made clear that the jury must be convinced beyond a reasonable doubt that the defendant was running his automobile in reckless disregard of human life and that "negligence, to become criminal, must be reckless, wanton, and of such a character as shows an utter disregard of the safety of others under circumstances likely to cause injury." Moreover the facts in this case clearly support the verdict.

FROM C. G. VERNIER.

APPEAL.

People v. Mooney, Calif., 167 Pac. 696. *Consideration of stipulated facts.*

Under Const., art 6, sec. 4, limiting the Supreme Court's jurisdiction on appeal from the Superior Courts to questions of law alone, where judgment of death has been rendered, evidence discovered after appeal by the defendant from a conviction of murder cannot be considered by the Supreme Court.

Const., art 6, sec 4½, providing that the Supreme Court may not set aside a judgment or grant a new trial for any error of law, "unless, after an examination of the entire cause, * * * the Court shall be of the opinion that the error complained of has resulted in a miscarriage of justice," further limits the power of the Supreme Court; the words "entire cause" meaning only the cause as presented by the record.

Stipulations of the Attorney General with one appealing from a conviction of murder do not give this court authority to consider evidence discovered after the appeal, or any matter outside the record.

ATTEMPT.

Cole v. State, Okla., 166 Pac. 1115. *Is solicitation to commit adultery an attempt?*

Mere solicitation to commit adultery cannot be prosecuted under the law as an attempt to commit adultery. An information which charges only a solicitation to commit adultery does not state facts sufficient to constitute a public offense under the attempt statute.

Leverett v. State, Ga., 93 S. E. 232. *Attempt to manufacture intoxicating liquor.*

(a) An instruction by the court, authorizing the jury to find the accused

guilty of an attempt to commit the crime of manufacturing alcoholic, spirituous, malt, and intoxicating liquors, was proper.

(b) There was some testimony tending to show that the crime had been not only attempted, but consummated; but, despite the inhibition of the Penal Code against a conviction of an attempt to commit an offense, when it shall appear that the offense attempted was actually perpetrated by the defendant in pursuance of such attempt (Penal Code of 1910, sec. 19), and notwithstanding the evidence that a considerable quantity of whisky was found near the still, which the accused was apparently attempting to operate, the jury were not compelled to conclude that he had assisted in the manufacture of the completed product, but was authorized to find that he was then attempting to manufacture intoxicants, and may have entertained a reasonable doubt that he had been interested in the manufacture of the completed product discovered, or may have believed that he had but recently connected himself with the illicit enterprise, and was attempting for the first time and with all the necessary equipment to engage in the manufacture of intoxicants.

CONSTITUTIONAL LAW.

State v. Fabbri, Wash. 167 Pac. 133. *Prohibiting manufacture of liquor for personal use.*

Laws 1915, p. 3, sec. 4, making an offense the manufacture of intoxicating liquor by any person solely for his own personal use, is not violative of Const. U. S. Amend. 14, providing that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, and that no state shall deprive any person of life, liberty, or property without due process of law, etc., or of Const. Wash. art. 1, secs. 3 and 7, providing that no person shall be deprived of life, liberty, or property without due process of law, and that no person shall be disturbed in his private affairs or his home invaded without authority of law.

Valdez v. United States, 37 Sup. Ct. Rep. 725. *Confronting with witnesses—View of scene of crime.*

An inspection of the scene of a homicide, made by the trial judge in the presence of counsel for the accused, but in the absence of the accused himself, did not infringe the right to "meet the witnesses face to face," secured to an accused by the Act of July 1, 1902 (32 Stat. at L. 692, chap. 1369), sec. 5, enacting a Bill of Rights for the Philippine Islands, where the judge, in his inspection of the scene, was not improperly addressed by anyone, and did no more than visualize the testimony of the witnesses.

Clarke, J., and White, C. J., dissenting.

State v. Owen, Wash., 166 Pac. 793. *Legality of indictment under initiative statute.*

Whether amendment 7 to the state constitution, providing for the initiative and referendum, is in violation of Const. U. S. art. 4, sec. 4, guaranteeing to every state a republican form of government, is a federal question, and the federal Supreme Court has held the constitutional guaranty is a political matter beyond jurisdiction of courts.

The claim that amendment 7 to the state constitution is in violation of Const. U. S. art. 4, sec. 4, guaranteeing to every state a republican form of government, has been foreclosed by Congress, to which the matter is ex-

clusively committed by admitting thereto senators and representatives of this state since the adoption of the amendment.

EXTRADITION.

In re Whittington, Calif., 167 Pac. 404. *Is one compelled to leave the state a fugitive?*

One is not a fugitive from justice from the state of Texas, so as to be subject to extradition thereto, where, having been arrested in that state for an offense there committed, he was with permission of its authorities taken on process under extradition to the state of California, there to answer to a charge of having committed a crime, though the latter charge was later dismissed.

FALSE PRETENSES.

Knepper v. People, Colo., 167 Pac. 779. *Note in hands of maker: "Other valuable thing."*

Under Rev. St. 1908, sec. 1849, providing that, if any one knowingly and designedly by false pretenses obtains from any person any chose in action, money, goods, or "other valuable thing whatever" with intent to defraud, the offender shall be deemed a cheat, and in view of sec. 5540, defining "personal property" to include everything the subject of ownership, whether tangible or intangible, a note reduced to possession by a swindler is "personal property," and a thing of value even in the hands of the maker.

Garrigues, J., dissenting.

GRAND JURY.

People v. Lensen, Calif., 167 Pac. 406. *May women serve on grand jury?*

The word "men," as used in Code Civ. Proc. sec. 190, defining a jury as "a body of men," and section 192, providing that a grand jury is "a body of men," did not include women, notwithstanding Pen. Code, sec. 7, providing that words used in the masculine gender include feminine; hence an indictment presented by a grand jury of 11 men and 8 women, prior to the amendments approved May 29, 1917 (St. 1917, p. 1282), was not "found as prescribed in this Code," within the meaning of Pen. Code, sec. 995, providing that such indictments be set aside.

IMMUNITY.

People v. Fryer, Calif., 167 Pac. 382. *Construction of Immunity Statute.*

Under Pen. Code, sec. 1324, providing for immunity to a witness whose testimony may incriminate himself where defendant, charged with murder, had been called as a witness on preliminary examination of another, and had been sworn and testified, incriminating himself, without a word of instruction as to his rights, the statute not having been read to him, defendant was thereafter immune from prosecution.

Angelloti, C. J., and Lawlor and Lorigan, J. J., dissenting. The statute reads: "No . . . person shall be exempt from indictment, presentment by information, prosecution or punishment for the offense with preference to which he may have testified as aforesaid, or for or on account of any transaction, matter or thing concerning which he may have testified as aforesaid, or produced evidence, documentary or otherwise, where such person so testifying or so producing evidence, documentary or otherwise, does so

voluntarily, or when such person so testifying or so . . . fails to ask to be excused from testifying or so producing evidence, on the ground that his testimony or such evidence, documentary or otherwise, may incriminate himself, but in all such cases, the testimony or evidence, documentary or otherwise, so given may be used in any criminal prosecution or proceeding against the person so testifying or producing such evidence, documentary or otherwise.

"Any person shall be deemed to have asked to be excused from testifying or producing evidence, documentary or otherwise, under this section, unless before any testimony is given or evidence, documentary or otherwise, is produced by such a witness, the judge, foreman or other person presiding at such trial, hearing, proceeding or investigation, shall distinctly read this section of this code to such witness, and the form of the objection by the witness shall be immaterial, if he in substance makes objection that his testimony or the production of such evidence, documentary or otherwise, may incriminate himself, and he shall not be obliged to object to each question, but one objection shall be sufficient to protect such witness from prosecution for any offense concerning which he may testify, or for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, upon such trial, hearing, proceeding or investigation."

INDICTMENT AND INFORMATION.

People v. Griesheimer, Calif., 167 Pac. 521. *Failure to allege cause in charge of false pretenses.*

Under Const., art. 6, sec 4½, providing that no judgment shall be set aside or new trial granted for error as to pleading unless the court is of the opinion that it resulted in a miscarriage of justice, an alleged defect in an information, charging the crime of obtaining money by false pretenses, in that it failed to show the causal connection between the pretense and the surrender of the money, is not a ground for reversal.

Henshaw, Melvin and Lorigan, J. J., dissenting.

INSTRUCTIONS.

State v. Turnage, S. Car., 93 S. E. 182. *"Leaving community" as ground for inferring guilt.*

In a murder case, "leaving a community" and "flight" are not synonymous words, since "flight" is the evading of the course of justice, by a man's voluntarily withdrawing himself, and where a defendant left the community after a crime, but denies that he was evading arrest, flight or evasion of arrest is a question for the jury; hence it was error to charge that an inference might be drawn against the defendant from the fact that he left the community.

Hydrick and Gage, J. J., dissenting.

NOTES AND ABSTRACTS

ANTHROPOLOGY—PSYCHOLOGY—LEGAL—MEDICINE.

A Social Study of Mental Defectives in New Castle County, Delaware.—

"No State has as yet made adequate provision for mental defectives. In considering how best to meet the need for increased care and protection it is coming to be recognized that the problem is a complex one which can not be solved by any one measure. The adequacy of the care and protection which can be given a mentally defective individual in his own home depends upon the economic circumstances and character of the family. Furthermore, mental defectives vary as to the kind of care and training and the amount of supervision needed. Public provision for the care and protection of mental defectives is urgently needed for two classes:

1. "Those who are delinquent, degenerate, or uncontrollable and thus constitute a menace to the home, school, and community.
2. "Those who are deprived of normal home life or whose families can not give them the necessary care and protection.

"The Children's Bureau undertook an investigation in New Castle County, Del., for the purpose of securing social data in regard to the conditions under which mental defectives live, the problems involved in the lack of proper facilities for their care, and the extent of the need for public supervision and institutional provision. The Children's Bureau made no examinations of mentality, but used as a basis for social investigations the results of mental examinations made available by the Public Health Service and diagnoses by other physicians competent to determine mentality. The investigation was begun in the fall of 1915, and the field work was completed in July, 1916.

"The only provision in Delaware for the care and training of mental defectives is the State fund for the maintenance of 14 Delaware children in the Pennsylvania Training School for Feeble-minded Children at Elwyn, Pa. An effort is being made to secure more adequate provision in the State.

"The population of Delaware according to the estimates of the Bureau of the Census for July 1, 1916,¹ was 213,380. New Castle County, the northern of the three counties of the State, had an estimated population of 131,670. The population of this county has increased very materially since 1910, owing to the unusual industrial conditions of the past two years. The county includes Wilmington, the only large city in the State, which, according to the census estimates for 1916, had a population of 94,265. There are a number of small towns in the county, the largest of them having a population of about 4,000. Seventy-four per cent of the population in 1910 was urban (living in cities of 2,500 or more). Part of the county is practically suburban to Wilmington or to Pennsylvania cities.

"The population of New Castle County, as well as of the State as a whole, is chiefly native white. In this county, according to the 1910 census, 74.2 per cent of the population were native white, 13.1 per cent were foreign-born white, and 12.7 per cent were colored. Within the last two or three years the popula-

¹Bureau of the Census Bulletin No. 133, p. 15.

tion of the county has become more heterogeneous through an influx of foreign laborers.

"New Castle County has large industrial establishments. Manufacturing is carried on in the smaller towns as well as in Wilmington. Agriculture, especially dairying, is an important occupation. Conditions in this county are very different from those prevailing in the southern part of the State, where the population is almost entirely rural and the raising of fruits and vegetables is the principal industry.

"In preparation for an intensive study of individual defectives a rapid survey was made of social agencies and institutions and general social conditions of the State. Information was secured in regard to existing resources for dealing with the problems of defect, dependency, and delinquency, including utilization of facilities of other States.

"A list of supposed mental defectives in New Castle County was secured through the co-operation of all institutions in the State having inmates who came from this county, social agencies of all kinds, public and parochial schools, county and State officials, workers dealing with problematic children, and private individuals in all parts of the county having special knowledge of conditions. Only persons in the county at the time of the investigation and those who were temporarily away from home but whose families lived in the county were included in the study. Inmates of institutions in New Castle County admitted from outside the county were not included.

"In order to determine which of the individuals reported were definitely defective, diagnoses were secured for as many of the cases as possible. The mental examinations of school children in New Castle County made by the United States Public Health Service materially aided in this.² These examinations covered all children in the schools of New Castle County outside of Wilmington and a selected list of Wilmington school children. A considerable number of mental defectives studied were or had been formerly inmates of the Delaware Hospital for the Insane, or had been under observation of hospitals and clinics in neighboring States and therefore had received adequate diagnosis. An additional number of cases had had physical and mental examinations by local physicians. Some cases were of such low-grade mentality that they could be classified as feeble-minded without mental examinations.

"Inmates of institutions for juvenile delinquents examined and found feeble-minded were included. It was impossible to present adequate data concerning inmates of institutions for dependents, since no mental examinations had been made. From the latter institutions, therefore, only a few cases which had been examined previously or which were unquestionably feeble-minded were included as positive cases. The recent provision for examination of delinquent children and of such dependent children as come before the Wilmington juvenile court will undoubtedly in time be extended to include all children of doubtful mentality in the care of agencies and institutions.

"The list of possible mental defectives secured from all sources was analyzed into three groups of cases:

1. "Positive cases of mental defect.
2. "Questionable cases.

²U. S. Public Health Service, Public Health Reports, vol. 31, No. 46, Nov. 17, 1916. Mental Status of Rural School Children, pp. 3174 ff.

3. "Cases dropped because probably not feeble-minded. Among these cases were 15 epileptics excluded from the positive or questionable cases because there was no evidence of mental deterioration.

"'Positive cases' included those diagnosed as mentally defective by competent authority and those of so low a grade of mentality as not to require examination.

"'Questionable cases,' or cases of probable mental defect, included those of doubtful mentality who were not given mental examinations and those for whom positive diagnoses could have been made only after more prolonged observation than it was possible for the examining physician to give.

"Individuals adjudged mentally defective through diagnoses or because they appeared to be obvious cases were followed further. Information was secured by means of investigation of home conditions supplemented by school records and by data secured from agencies and institutions and from individuals having particular knowledge of the cases studied. The points covered included economic status and character of the family; physical conditions and developmental history; personal characteristics; school history and attainments; occupational history and economic efficiency; social reactions, including delinquencies and other antisocial tendencies; and ability of the family to care for and safeguard the defective individual. Social data less extensive than those secured for the positive cases were obtained for cases of questionable mentality."

SUMMARY.

"A total of 175, or 82.5 per cent, of the cases studied were in need of public supervision or institutional care. Ninety-five of these were at large in the community in immediate need of special care and protection, 68 were in institutions not designed for their care, and 12 were provided for only temporarily in an institution for the feeble-minded.

"A study of individual cases of mental defectives reveals in a striking way the coincidence of mental defect and poverty, abnormal home conditions, neglect, and dependency. A majority of the mental defectives were found in an environment making normal standards of living impossible.

"Eighty-three, or 39 per cent of the total number, were living under adverse home conditions—extreme poverty, alcoholism, immorality, or entire lack of home protection. An additional 68, or 32 per cent, were in institutions not adapted to their needs, making a total of 71 per cent living under conditions where adequate care and protection were impossible or provided for only temporarily in institutions designed to care for other classes.

"That society must provide special protection for mental defectives is strongly indicated by the fact that 98 of the total number studied had delinquency records or were immoral or difficult to control. Seventy-nine of these were living under adverse conditions or in institutions not adapted to their needs, while 7 were in an institution for the feeble-minded, and 12 were living in good homes.

"The problem of those requiring special care and training because of subnormal mentality is not limited to the 212 positive cases of mental defect included in this study. The 361 individuals classified as of questionable mentality undoubtedly included a number who were actually mentally defective. All of them presented problems of retardation or abnormality. More than

one-third of the questionable cases for whom information as to individual characteristics was secured were known to be delinquent or uncontrollable. A total of two-thirds of those for whom detailed data were obtained were in homes where proper care and safeguarding were impossible, or had already developed antisocial tendencies.

"Delaware has an unusual opportunity to work out a well-rounded program of adequate provision for all classes of mental defectives. It is a small State, and, having no established system of care, is free to utilize to the fullest extent the experience of other States.

"Any program for adequate provision for mental defectives must have as its central feature institutional provision. The data gathered in this investigation furnish evidence as to the imperative need for institutional care and training for defective individuals who can not be given proper care, training, and protection in the community and for those who are a menace to the community by reason of delinquent tendencies. A large number of cases need permanent custodial care. But institutional care alone can not meet the whole problem of provision for mental defectives. The institution should serve as the focus for the various activities necessary for the proper care of the feeble-minded.

"Facilities for mental examination and diagnosis available to all sections of the State are essential and might be provided by a system of clinics held in various parts of the State at regular intervals by the institution psychiatrist, in co-operation with the schools and other existing agencies. The need for mental examinations is indicated by the fact that more than 1,100 persons in New Castle County were reported to the investigators as possibly feeble-minded. Facilities for mental examinations are particularly needed for proper treatment of delinquent and dependent children. They are requisite also for classification of children in the schools.

"An essential part of the improvement of the school system of Delaware is special provision for retarded children, taking into account the reason for their backwardness—bad physical condition, lack of opportunity, or actual mental defect. The State educational authorities have repeatedly called attention to the seriousness of the problem of retardation in the schools and the necessity for more adequate compulsory education laws and better school equipment. In towns where the school system is large enough to make it practicable special classes should be developed which would provide industrial training and other instruction adapted to the needs of those mentally defective children who can safely remain in the community and would make it unnecessary to remove them to an institution for training.

"The place of the special class in the program of public care for defective children has been demonstrated by the experience of a number of cities where such classes have for several years been part of the public-school system. Dr. George L. Wallace, superintendent of the Wrentham State School for the Feeble-minded, in a recent address,³ said:

"With the extension of this movement for special classes, until every school system of any size has a sufficient number to accomodate all children

³Annual Conference of Massachusetts Society for Mental Hygiene, Boston, Mass., Dec. 13-15, 1916. "The type of feeble-minded who can be cared for in the community." Published in *Ungraded*, vol. 2, No. 5 (February, 1917), p. 105, and, in part, in *Mental Hygiene*, vol. 1, No. 2 (April, 1917), p. 291.

with mental defect, it would seem that the larger number of children with ordinary mental defect could be safely protected and educated in the community.'

"It is coming to be recognized that the expense to the State of institutional provision can be much reduced and greater justice done to individuals by a system of parole of certain classes of mental defectives who have been trained in an institution and by supervision through an out-patient department of those defectives who can be given proper care and training in the community. Such out-patient work could be carried on in co-operation with the schools and other agencies coming in contact with the problem. This method of parole and supervision in the community of certain types of mental defectives is being advocated by some of those most experienced in the care of the feeble-minded. Mr. Alexander Johnson speaks of the importance of the practical movement for the after-care of certain classes of the feeble-minded who have been trained in the school.⁴ Dr. Wallace, in the eighth annual report⁵ of the Wrentham State School, says:

"Boys and girls whose mental and moral defectiveness is not extreme, who have profited by a period of institutional education and care, who have perhaps been tided over a few critical years of their life—these we are reasonably hopeful may do fairly well in the community provided we carry institutional provision to them in the form of a good visitor, while also having them report to the institution at certain periods. I believe this is one method whereby a school for the feeble-minded can extend its work and bring a larger number of feeble-minded under supervision than can be maintained within the institution grounds.'

"The possibility of caring for mental defectives in the community is brought out in the recent report of the Indiana committee on mental defectives, which speaks of the 'value and far-reaching importance of community care.'⁶ The need for supervision in the community was emphasized at the last annual conference of the Massachusetts Society for Mental Hygiene. Dr. Walter E. Fernald, in an address on 'What is now practicable in the way of protection, education, supervision, and segregation of the feeble-minded,'⁷ said:

"There is now needed something between permanent segregation and no care. We may be able to distinguish between those who can go out into the community and those who must stay in an institution. * * * The ideal should be segregation for those who need it and supervision in the community for those suitable for community life.'

"Defective individuals are found in all ranks of society and under all varieties of conditions; they become community problems when they develop antisocial tendencies or when they are without proper care or control because of poverty or detrimental home conditions. Without a system of mental examinations and supervision in the community the higher grade mental defectives are not usually recognized as such until they have become socially troublesome. A comprehensive program, including mental examinations, special

⁴"The feeble-minded," *The Survey*, vol. 37, p. 361 (Dec. 30, 1916).

⁵Wrentham (Mass.) State School, Eighth Annual Report, for the year ending Nov. 30, 1914, p. 15.

⁶Mental Defectives in Indiana. Report of Committee on Mental Defectives, Indianapolis, Ind., Nov. 10, 1916, p. 6.

⁷Annual Conference of Massachusetts Society for Mental Hygiene, Boston, Mass., Dec. 13-15, 1916. Paper as yet unpublished.

classes, and supervision in the community, as well as institutional provision, would result in the greatest benefit to the defective individual and to the community and would reduce the social burden of delinquency and degeneracy."—*Emma O. Lundberg*, From U. S. Dept. of Labor, Children's Bureau, Publication No. 24.

COURTS—LAWS.

Support of Destitute Families of Prisoners in Pennsylvania.—An Act authorizing cities of the first class to make appropriations for the support of destitute families of persons sentenced to imprisonment, and providing a system of control and administration for the distribution thereof.

Section 1. Be it enacted, &c., That cities of the first class may appropriate moneys for the maintenance and care of destitute families of persons sentenced in such city to imprisonment, whose families are, and were at the time of the conviction of such person, domiciled within such cities of the first class.

Section 2. The councils of such cities of the first class shall designate a department of the city government to have the control and disbursement of any such appropriation, and may provide such employees, and fix their salaries, as may be necessary to carry this act into effect.

Section 3. The family of any person, sentenced in such city to imprisonment, which is in destitute circumstances, may apply for assistance to the department having the disbursement of the appropriation. Upon the receipt of any such application, the persons in charge of this work shall investigate the facts of the case, taking into account the number of dependents in each case, and shall either refuse or allow such assistance as may be considered necessary.

Section 4. In all cases where assistance is allowed to any family, the same shall be paid by the city treasurer, upon the warrant of the department having the control of such appropriation, countersigned by the comptroller.

Section 5. In all cases where assistance is allowed to any destitute family, the person making such allowance shall take into consideration any moneys which may come into the possession of such family under the provisions of an act, approved the thirteenth day of June, one thousand eight hundred and eighty-three (Pamphlet Laws, one hundred and twelve), entitled "An act to abolish the contract system in the prisons and reformatory institutions of the State of Pennsylvania, and to regulate the wages of the inmates;" and of an act, approved the first day of June, one thousand nine hundred and fifteen (Pamphlet Law, six hundred and fifty-six), entitled "An act providing a system of employment and compensation for the inmates of the Eastern Penitentiary, Western Penitentiary, and Pennsylvania Industrial Reformatory at Huntingdon, and for such other correctional institutions as shall be hereafter established by the Commonwealth, and making an appropriation therefor;" and of an act, approved the fourth day of June, one thousand nine hundred and fifteen (Pamphlet Laws, eight hundred and twelve), entitled "An act authorizing and regulating the employment of convicts and prisoners on the public highways." (Passed by the Legislature and signed by the Governor of Pennsylvania, session of 1917).—*E. R. Keedy*, University of Pennsylvania.

Support of Child Born Out of Wedlock in Pennsylvania.—An act making it a misdemeanor for a parent wilfully to neglect to support a child born out of lawful wedlock, whether such child shall have been begotten or shall have been born within or without this Commonwealth; providing punishment there-

for, and empowering the court to make an order for support, and to enforce the same. And declaring persons making false statements, in certain cases, guilty of perjury.

Section 1. Be it enacted, &c., That any parent who shall wilfully neglect or refuse to contribute reasonably to the support and maintenance of a child born out of wedlock shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding five hundred dollars (\$500), or imprisonment not exceeding six months, or both, with or without hard labor, in the discretion of the court.

Section 2. Proceedings under this act may be instituted upon complaint made, under oath or affirmation, by the parent of such child.

Section 3. This act shall apply whether such child shall have been begotten or shall have been born within or without this Commonwealth.

Section 4. Before the trial, with the consent of the defendant indorsed on the bill of indictment, as now provided by law, or at the trial on entry of a plea of guilty, or after conviction, instead of imposing the fine herein provided, or in addition thereto, the court in its discretion, having regard to the circumstances and to the financial ability and earning capacity of the defendant, shall have the power to make an order, which shall be subject to change by the court, from time to time, as circumstances may require, directing the defendant to pay a certain sum periodically, for such time and to such person as the court may direct; and the court shall have the power to suspend the sentence herein provided, and release the defendant from custody on probation, in manner provided by "An act for relief of wives and children deserted by their husbands and fathers within this Commonwealth," approved the thirteenth day of April, Anno Domini one thousand eight hundred and sixty-seven, and the supplements thereto; provided that the defendant has entered into a recognizance in such sum, with or without surety, as the court shall direct, for compliance with such order.

Section 5. Whenever a parent is paying for the support of a child, under an order of court made in any other proceeding, civil, criminal, or quasi-criminal, said parent shall not be subject to proceedings for support for the same child under this act: Provided, however, That if said parent, as defendant in such other proceedings, has failed to obey such order of court, said parent shall be subject to all the provisions of this act.

Section 6. Any person who shall, at any stage of the proceedings under this act, knowingly make false statements as to who is the parent of a child, shall be guilty of the crime of perjury. (Passed by the Legislature and signed by the Governor of Pennsylvania, session of 1917.)—*E. R. Keedy.*

Law Regulating the Use of Drugs in Pennsylvania.—An Act for the protection of the public health by regulating the possession, control, dealing in, giving away, delivery, dispensing, administering, prescribing, and use of certain drugs, and keeping records thereof; by regulating the use of drugs in the treatment of the drug habit; by providing for the revocation and suspension of licenses of physicians, dentists, veterinarians, pharmacists, druggists, and registered nurses for certain causes, and by providing for the enforcement of this act, and penalties.

Section 1. Be it enacted, &c., That, except as limited in section two of this act, the word "drug," as used in this act, shall be construed to include—(a)

opium; or (b) coca leaves; or (c) any compound or derivative of opium or coca leaves; or (d) any substance or preparation containing opium or coca leaves; or (e) any substance or preparation containing any compound or derivative of opium or coca leaves.

Section 2. The word "drug" shall not be construed to include—(1) preparations and remedies and compounds which do not contain more than two grains of opium, or more than one-fourth of a grain of morphine, or more than one-eighth of a grain of heroin, or more than one grain of codeine, or any salt or derivative of any of them, in one fluid ounce, if the same is liquid; or, if a solid or semi-solid, in one avoirdupois ounce; (2) liniments, ointments, or other preparations, prepared and dispensed in good faith for external use only; providing such liniments, ointments, and preparations do not contain cocaine or any of its salts, or alpha or beta eucaïne or any of their salts, or any synthetic substitute for cocaine or eucaïne or their salts; (3) decocainized coca leaves, or preparations made therefrom, or other preparations of coca leaves which do not contain cocaine:

Provided, however, That no preparations, remedies or compounds containing any opium, or coca leaves, or any compound or derivative thereof, in any quantity whatsoever, may be sold, dispensed, distributed, or given away to, or for the use of, any known habitual user of drugs, except in pursuance of a prescription of a duly licensed physician or dentist.

Section 3. The word "person," as used in this act, shall be construed to include an individual, a co-partnership, or an association. Masculine words include the feminine or neuter. The singular includes the plural. The word "prescription" shall be construed to designate a written order, by a duly licensed physician, dentist, or veterinarian, calling for a drug, or for any substance or preparation containing a drug.

Section 4. No person shall have in his possession or under his control, or deal in, dispense, sell, deliver, distribute, prescribe, traffic in, or give away, any of said drugs. This section does not apply, in the regular course of their business, profession, employment, occupation, or duties, to—(a) manufacturers of drugs; (b) persons engaged in the wholesale drug trade; (c) importers or exporters of drugs; (d) registered pharmacists actually engaged as retail druggists; (e) bona fide owners of pharmacies or drug stores; (f) licensed physicians; (g) licensed dentists; (h) licensed veterinarians; (i) persons in the employ of the United States, or of this Commonwealth, or of any county, municipality, or township of this Commonwealth, and having such drugs in their possession by reason of their official duties; (j) warehousemen, or common carriers, engaged, bona fide, in handling or transporting drugs; (k) persons regularly in charge of drugs in dispensaries, hospitals, asylums, sanatoriums, poor-houses, jails, penitentiaries, or public institutions; (l) nurses under the supervision of a physician; (m) persons in charge of a laboratory where such drugs are used for the purpose of medical or scientific research only; (n) captains, or proper officers, of ships upon which no regular physician is employed, for the actual medical needs of the officers and crews of their own ship only; (o) persons having said drugs in their possession for their own personal use only, provided that they have obtained the same in good faith, for their own use, from a duly licensed physician or dentist, or in pursuance of a prescription given them by a duly licensed physician or dentist; (p) persons

having said drugs in their possession for the use of an animal belonging to them, provided that they have obtained the same in good faith, from a duly licensed veterinarian, for the use of such animal, or in pursuance of a prescription given by a duly licensed veterinarian; (q) persons in the bona fide employ of any of the persons above enumerated.

Section 5. No person shall use, take, or administer to his person, or cause to be administered to his person, or administer to any other person, or cause to be administered to any other person, any of the aforesaid drugs, except under the advice and direction, and with the consent, of a regularly practicing and duly licensed physician or dentist.

Section 6. No manufacturer, producer, importer, exporter or person engaged in the wholesale drug trade, and regularly selling drugs, shall sell, dispense, distribute, or give away, any of said drugs, except to—(a) a duly licensed physician; (b) a duly licensed pharmacist; (c) a duly licensed dentist; (d) a duly licensed veterinarian; (e) a manufacturer of drugs; (f) a person engaged in the wholesale drug trade and regularly selling drugs; (g) an exporter of drugs; (h) a bona fide hospital, dispensary, asylum, or sanatorium; (i) a public institution; (j) a bona fide owner of a pharmacy or drug store; (k) a person in a foreign country; (l) a person in charge of a laboratory where such drugs are used for the purpose of scientific and medical research only; (m) the captain, or proper officer, of a ship upon which no regular physician is employed, for the actual medical needs of the officers and crew of such ship only; (n) a person in the employ of the United States, of this Commonwealth, or of any county, municipality, or township thereof, purchasing or receiving the same in his official capacity.

No manufacturer, producer, importer, or person engaged in the wholesale drug trade, and regularly selling drugs, shall sell, dispense, distribute, or give away any of said drugs, except in pursuance of a written order signed by the person to whom such drug is sold, dispensed, distributed, or given. Such order shall be preserved for a period of two years, in such a way that it will be readily accessible to inspection by the proper authorities.

Section 7. No registered pharmacist, or bona fide owner of a pharmacy or drug store, regularly engaged in the sale of drugs at retail, shall sell, dispense, distribute, or give away any of said drugs, except to—(a) another registered pharmacist or bona fide owner of pharmacy or drug store; (b) a duly licensed physician; (c) a duly licensed dentist; (d) a duly licensed veterinarian; (e) a bona fide hospital, dispensary, asylum, sanatorium, or public institution; (f) an individual, in pursuance of a written prescription issued by a physician, dentist, or veterinarian, which prescription shall be dated as of the day on which signed, and shall be signed by the physician, dentist, or veterinarian who issued the same; (g) a person in charge of a laboratory where such drugs are used for the purpose of medical or scientific research only; (h) the captain, or proper officer, of a ship upon which no regular physician is employed, for the actual medical needs of the officers and crew of such ship only; (i) a person in the employ of the United States, or of this Commonwealth, or of any county, municipality, or township thereof, purchasing or receiving the same in his official capacity.

No registered pharmacist, or bona fide owner of a pharmacy or drug store, regularly engaged in the sale of drugs at retail, shall sell, dispense, distribute,

or give away any of said drugs, except in pursuance of a written order signed by the person to whom such drugs are sold, dispensed, distributed, or given. Such order shall be preserved, for a period of two years, in such a way that it will be readily accessible to inspection by the proper authorities. When such drugs are sold, dispensed, distributed, or given to an individual, in pursuance of a prescription, such prescription shall be regarded as the written order herein required, and no further written order shall be necessary.

Section 8. No physician or dentist shall sell, dispense, administer, distribute, give, or prescribe any of said drugs to any person known to such physician or dentist to be an habitual user of any of said drugs, unless said drug is prescribed, administered, dispensed, or given for the cure or treatment of some malady other than the drug habit: Provided, however, That if any physician desires to undertake, in good faith, the cure of the habit of taking or using opium or any of its derivatives, in any form, such physician may prescribe or dispense opium or its derivatives to a patient, provided such opium or its derivatives are prescribed and dispensed in good faith, for the purpose of curing such patient of such habit, and not merely for the purpose of satisfying a craving for the drug. In every such case the physician shall himself make a physical examination of the patient, and shall report, in writing, to the proper officer of the board of health of the city, borough, town, or township in which he resides, or to the State Department of Health, where there is no local board of health, the name and address of such patient, together with his diagnosis of the case and the amount and nature of the drug prescribed or dispensed in the first treatment. When the patient leaves his care such physician shall report, in writing, to said officer of the board of health, or to the State Department of Health, the result of his said treatment.

Any person divulging any information contained in any such report, except for the purpose of enforcing this act, or to a physician who may, in the opinion of the chief of the board of health or of the Commissioner of Health, be entitled to such information for the purpose of enabling him to comply with the provisions of this act, shall be sentenced to pay a fine not exceeding one thousand dollars, or to undergo an imprisonment not exceeding one year, or both, in the discretion of the court.

Section 9. No physician, dentist, or veterinarian shall administer, dispense, give away, deliver, or prescribe any of said drugs, except after a physical examination of the person or animal for whom said drugs are intended; said examination to be made at the time said prescription is issued, or at the time said drug is administered, dispensed, given away, or delivered by said physician, dentist, or veterinarian. No veterinarian shall sell, dispense, distribute, give, or prescribe any drug for the use of a human being.

Section 10. Every physician, dentist, and veterinarian shall keep a record of all said drugs administered, dispensed, or distributed by him, showing the amount administered, dispensed, or distributed, the date, the name and address of the patient; and, in the case of a veterinarian, the name and address of the owner of the animal to whom such drugs are dispensed or distributed; such record shall be kept for two years from the date of administering, dispensing, or distributing such drug, and shall be opened for inspection by the proper authorities. No record need be kept of any drug administered in an emergency case.

Section 11. This act shall not be construed to apply to the treatment of habitual users of drugs in public hospitals, sanatoriums, poorhouses, prisons, or public institutions.

Section 12. Any person who shall violate, or fail to comply with, any of the provisions of this act, except as provided in the last paragraph of section eight, shall be guilty of a misdemeanor; and, upon conviction, shall be sentenced to pay a fine not exceeding two thousand dollars, or to undergo an imprisonment not exceeding five years, or both, at the discretion of the court. If the violation is by a corporation, co-partnership, or association, the officers and directors of such corporation, or the members of such co-partnership or association, their agents and employees, with guilty knowledge of the fact, shall be deemed guilty of a violation of the provisions of this act to the same extent as though said violation were committed by them personally.

Section 13. In any prosecution under this act it shall not be necessary to negative any of the exemptions of this act in any complaint, information, or indictment. The burden of proving any exemption under this act shall be upon the defendant.

Section 14. Any license heretofore issued to any physician, dentist, veterinarian, pharmacist, druggist, or registered nurse may be either revoked or suspended by the proper officers or boards having power to issue licenses to any of the foregoing, upon proof that the licensee is addicted to the use of any of said drugs, after giving such licensee reasonable notice and opportunity to be heard.

Section 15. Whenever any physician, dentist, veterinarian, pharmacist, druggist, or registered nurse is convicted, in a court having jurisdiction, of any violation of this act, the license of such physician, dentist, veterinarian, pharmacist, druggist, or registered nurse may be revoked or suspended by the proper officers or boards having power to issue licenses to any of the foregoing classes, after giving such licensee reasonable notice and opportunity to be heard.

The term "license," as used in sections fourteen and fifteen of this act, shall be construed to include all licenses heretofore issued to any physician, dentist, veterinarian, pharmacist, druggist, or registered nurse, whether said license was issued by the officers or boards at present having power to issue the same, or whether granted under previous authority.

The term "officers or boards," as used in sections fourteen and fifteen of this act, shall be construed to designate such officers or boards as have power to issue licenses to physicians, dentists, veterinarians, pharmacists, druggists, or registered nurses at the time the power to revoke or suspend the license is exercised.

Section 16. The provisions of this act shall be enforced by the Department of Health of the Commonwealth of Pennsylvania; and for that purpose the Commissioner of Health is hereby authorized to establish, in the Department of Health, a bureau of division for such purpose, and to employ such assistants, stenographers, inspectors, clerks, and other employees as, in his opinion, may be necessary, and to fix their compensation. For the purpose of enforcing the provisions of this act the Commissioner of Health, and his assistants, either in said bureau or division, or any other bureau or division of his department, shall have the right to examine, at any time, any or all of the

records required by this act to be kept; and the Commissioner of Health may further require persons dealing in, buying, selling, handling, or giving away drugs to make such reports to him, or to the bureau aforesaid, as he may deem necessary or advisable. This section shall not be construed to exclude the other duly constituted authorities in this Commonwealth from enforcing the provisions of this act.

Section 17. All acts and parts of acts inconsistent with this act are hereby repealed.

Approved—The 11th day of July, A. D. 1917. (Act of General Assembly, No. 282).

Sale and Distribution of Narcotic Drugs in Massachusetts.—Section 1.. It shall be unlawful for any person, firm or corporation to sell, furnish, give away or deliver coca leaves or any cocaine or any alpha or beta eucaine or any synthetic substitute for them, or any salts, compound or derivative thereof, except decocainized coca leaves and preparations thereof, or any opium, morphine, heroin, codeine or any preparation thereof, or any salt, compound or derivative of the same, except upon the written order of a manufacturer or jobber in drugs, wholesale druggist, registered pharmacist actively engaged in business as such, physician, dentist, veterinarian, registered under the laws of the State in which he resides, or an incorporated hospital, college or scientific institution through its superintendent or official in immediate charge, or upon the written prescription of a physician, dentist or veterinarian, registered under the laws of the State in which he resides, bearing the date when signed, his office address, the registry number given him under public acts two hundred and twenty-three of the sixty-third congress, approved December seventeenth, nineteen hundred and fourteen, the legal signature of the physician, dentist or veterinarian giving it, the name and address of the patient for whom prescribed, which prescription, when filled, shall show the date of filling and shall be retained on file by the druggist filling it for a period of at least two years. The prescription shall not again be filled, nor shall a copy of the same be made, except for the purpose of record by the druggist filling the same, and it shall at all times be open to inspection by the officers of the State Department of Health, the board of registration in pharmacy, the board of registration in medicine and the authorized agents of said department and boards, and by the police authorities and police officers of cities and towns: Provided, however, that the provisions of this act shall not apply to prescriptions nor to the sale, distribution, giving away or dispensing or possession of preparations or remedies, if such prescriptions, preparations and remedies do not contain more than two grains of opium or more than one quarter of a grain of morphine, or more than one-eighth of a grain or heroin or more than one grain or codeine, or any salt, compound or derivative of any of them in one fluid ounce, or, if a solid or semi-solid preparation, in the avoirdupois ounce; nor to liniments, ointments or other preparations which are prepared for external use only, except liniments, ointments and other preparations which contain cocaine or any of its salts or alpha or beta eucaine or any of their salts or derivatives, or any synthetic substitute for them; provided, that such preparations, remedies or prescriptions are sold, distributed, given away or dispensed or in possession in good faith as medicines and not for the purpose of evading the provisions of this act; and provided, further, that the possession of any of

the drugs mentioned in this act, except prescriptions and preparations or remedies especially exempted in this section, by any one not being a manufacturer or jobber of drugs, or wholesale druggist, registered pharmacist actively engaged in business as such, or a physician, dentist or veterinarian, registered under the laws of the State in which he resides, or superintendent or official in charge of an incorporated hospital, college or scientific institution shall be presumptive evidence that such possession was a violation of this act. The provisions of this section shall not apply to persons having in their possession any of the above mentioned articles by virtue of a legal prescription therefor, nor shall the provisions of this act apply to decocainized coca leaves or preparations made therefrom or to other preparations of coca leaves which do not contain cocaine.

Section 2. It shall be unlawful for any practitioner of veterinary medicine or surgery to prescribe any of the drugs mentioned in section one of this act for the use of a human being, and it shall be unlawful for any physician or dentist to prescribe, sell, give away or deliver any coca leaves or any cocaine or any alpha or beta eucaine or any compound, derivative or synthetic substitute for them, or opium, morphine, heroin, codeine or any preparation thereof, or any salt, compound or derivative of said substances to any person known to such physician or dentist to be an habitual user of those drugs, except when the drug is obviously needed for therapeutic purposes.

Section 3. The provisions of this act shall not be construed to prevent any lawfully authorized practitioner of medicine, dentistry, or veterinary medicine from prescribing, administering, dispensing or distributing any of the drugs mentioned in this act that may be indicated for any patient under his care: Provided, that such prescribing, administering, dispensing, or distributing is not for the purpose of evading the provisions of this act; and provided, further, that every physician, dentist or veterinarian shall, within twenty-four hours after such administering, dispensing or distributing, make a record in a book kept by him solely for that purpose of the date, the name and address of the patient to whom administered, dispensed or distributed, and the quantity and kind of such drug administered, dispensed or distributed, and provided, further, that such record shall not be required where the physician, dentist or veterinarian administers, dispenses or distributes any of the drugs mentioned in this act to a patient on whom he personally attends. Each page of the book shall be ruled and kept in substantially the following form:

Name of Physician or Dentist (sign in full on each page).

Date.

NAME OF PERSON TO WHOM

DISPENSED.

Address.

Drugs

dispensed.

Amount

dispensed.

Provided, however, that any form of record approved or required by the Commissioner of Internal Revenue under and by virtue of public acts two hundred and twenty-three of the sixty-third congress, approved December

seventeenth, nineteen hundred and fourteen, shall be deemed a sufficient record to comply with the requirements of this act. This record shall be at all times open to inspection by the State Department of Health, the board of registration in pharmacy, the board of registration in medicine and the authorized agents of said departments and boards, and by the police authorities and police officers of cities and towns.

Section 4. Any manufacturer or jobber of drugs, and any wholesale druggist and any registered pharmacist actively engaged in business as such, any physician, dentist or veterinarian registered under the laws of the State in which he resides may sell coca leaves, cocaine or any alpha or beta eucaïne or any synthetic substitute for them or any preparation containing the same, or any salts, compound or derivative thereof, or any opium, morphine, codeine, heroin or any preparation thereof, or any salt or compound or derivative of such substances, to any manufacturer or jobber in drugs, wholesale druggist, registered pharmacist actively engaged in business as such, or physician, dentist or veterinarian registered under the laws of the State in which he resides, or to any incorporated hospital, college or scientific institution, but such substances or preparations, excepting such preparations as are included within the exemptions set forth in section one, shall be sold only upon the written order of an incorporated hospital, college or scientific institution, duly signed by its superintendent or official in immediate charge, or upon a written order duly signed by such manufacturer or jobbers in drugs, wholesale druggist, registered pharmacist actively engaged in business as such, or physician, dentist or veterinarian registered under the laws of the State in which he resides, which order shall state the article or articles ordered, the quantity ordered and the date. The said orders shall be kept on file in the laboratory, warehouse, pharmacy or store in which they are filled by the proprietor thereof or his successors for a period of not less than two years after the date of delivery, and shall be at all times open to inspection by the State Department of Health, the board of registration in pharmacy, the board of registration in medicine and the authorized agents of said departments and boards, and by the police authorities and police officers of cities and towns.

Section 5. Any manufacturer or jobber in drugs and any wholesale druggist and any registered pharmacist actively engaged in business as such, physician, dentist or veterinarian registered under the laws of the State in which he resides, and any incorporated hospital, college or scientific institution through its superintendent or official in immediate charge that shall give an order for any of the aforesaid drugs in accordance herewith shall preserve a duplicate thereof for a period of two years after the date of giving the same, which shall at all times be open to inspection by the State Department of Health, members of the board of registration in pharmacy, the board of registration in medicine and the authorized agents of said departments and boards, and by the police authorities and police officers of cities and towns. The order now or hereafter required by the regulations of the Commissioner of Internal Revenue under and by virtue of public acts number two hundred and twenty-three of the sixty-third congress, approved December seventeenth, nineteen hundred and fourteen, shall be deemed to be sufficient order to comply with this and the preceding section.

Section 6. Any person who, for the purpose of evading or assisting in the

evasion of any provision of this act shall falsely represent that he is a physician, dentist or veterinarian, or that he is a manufacturer or jobber in drugs or wholesale druggist or pharmacist actively engaged in business as such, or that he is superintendent or official in immediate charge of an incorporated hospital, college or scientific institution, or a person registered under public act two hundred and twenty-three of the sixty-third congress, approved December seventeenth, nineteen hundred and fourteen, or who, not being an authorized physician, dentist or veterinarian, makes or alters a prescription for any of the substances above mentioned shall be deemed guilty of a violation of this act.

Section 7. The possession of a federal certificate issued under and by virtue of public act number two hundred and twenty-three of the sixty-third congress, approved December seventeenth, nineteen hundred and fourteen by any person shall be prima facie evidence of an intent to sell, furnish, give away or deliver any of the drugs enumerated in this act.

Section 8. Nothing in this act shall apply to common carriers engaged in transporting the aforesaid drugs or to any employee, acting within the scope of his employment, of any person who shall lawfully be in possession, for the purpose of delivery, or any of the drugs mentioned in this act, or to any person who shall deliver any such drug which has been prescribed or dispensed by a physician, dentist or veterinarian registered under the laws of the State in which he resides who has been employed to prescribe for the particular patient receiving such drug, or to a nurse under the supervision of a physician, dentist or veterinarian having possession or control by virtue of his employment or occupation and not on his own account, or to the possession of any of the aforesaid drugs which have been prescribed in good faith by a physician, dentist or veterinarian, or to any United States, State, county municipal, district, territorial or insular officer or official who has possession of any of said drugs by reason of his official duties, or who, as an officer or duly appointed agent of any incorporated society for the suppression of vice, has the same in his possession for the purpose of assisting in the prosecution of violations of this act.

Section 9. The provisions of this act, except those sections which require the ordering of the above enumerated drugs on an official order blank and the keeping of the same on file, and the keeping of the record relative thereto, shall apply to cannabis indica and cannabis sativa, except that the same shall not apply to prescriptions, preparations or remedies which do not contain more than one half grain of extract of cannabis indica or more than one half grain or extract of cannabis sativa in one fluid ounce, or if a solid or semi-solid preparation in the avoirdupois ounce, nor to liniments, ointments or other preparations containing cannabis indica and cannabis sativa, which are prepared for external use only.

Section 10. The repeal of any law by this act shall not affect any action, suit or prosecution pending at the time of the repeal for an offense committed, or for the recovery of a penalty, or forfeiture incurred, under any of the laws repealed.

Section 11. Whoever violates any provision of this act shall be deemed guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the house of correction or jail for a term not exceeding one year, or by both such fine and imprisonment.

Section 12. Chapters six hundred and ninety-four and seven hundred and eighty-eight of the acts of the year nineteen hundred and fourteen, and sections two to six, inclusive, of chapter three hundred and eighty-seven of the acts of the year nineteen hundred and ten, are hereby repealed.

Approved April 20, 1915. (Chap. 187, page 4.)

Grand Jury Resolution Relating to Narcotic Drugs.—Whereas, The Grand Jurors, United States of America, for the Southern District of New York, upon their sworn oaths have impartially caused to be found during their September, 1917, Term, an unlimited number of indictments against an army of defendants for flagrant violations of an Act of Congress approved December 17, 1914, relating to the production, importation, manufacture, compounding, sale, dispensing or giving away of opium or coca leaves, their salts, derivatives or preparations; and consummated within the jurisdiction of the Southern District of New York; and

Whereas, It has come to the official attention, observation and knowledge of the Grand Jurors, United States of America, Southern District of New York, that notwithstanding the stringent provisions of this Act of Congress as aforesaid and its strict enforcement by the United States Internal Revenue and other agents of the United States, it was amazing, revolting and shocking to hear the testimony under oath of the various witnesses before the Grand jurors, in particular the addicts, as to with what ease they purchased and obtained such narcotic drugs as heroin, morphia, cocaine, and opium, from divers persons who illegally traffic and peddle the sale of these various narcotic drugs as aforesaid, and how certain physicians in the daily course of their professional practice personally, promiscuously write prescriptions for these addicts under guise of correctional medical treatment and radical cure, calling for the compounding of various narcotic drugs aggregating excessive doses, which said prescriptions these said addicts take to certain drug stores within the jurisdiction of the Southern District of New York for compounding and delivery to these said addicts, at fabulous and prohibitive prices; and

Whereas, These certain proprietors of drug stores are in league with these certain physicians under a partnership arrangement with a legally drawn contract whereby a scale of prices and profits accrue to these certain physicians based upon the amount of quantity of the narcotic drug so indicated on prescriptions; and

Whereas, This enormous, criminal trafficking in narcotic drugs in the City and County of New York within the jurisdiction of the Southern District of New York by confirmed addicts, convicted felons, unscrupulous persons, physicians, druggists and others is most revolting, shocking and disgraceful, a menace to the human race, and beyond the control of the Act of Congress approved December 17, 1914, and specially enacted to prevent and guard against such conditions.

Now, Therefore, Be It Resolved, That the Grand Jurors, United States of America, for the Southern District of New York, September, 1917, Term, now in session, after careful and mature consideration and due deliberation, by a unanimous vote of its body, a full quorum being present, mindful of its duties and powers, respectfully suggest and recommend the following:

That the entire output of the production and manufacture by all manufacturing and pharmaceutical chemists and other chemical manufacturers of opium or coca leaves, their salts, derivatives or preparations, etc., should be

in absolute and direct control of the United States Government, that chemists and Internal Revenue Inspectors should be assigned to the various manufacturing chemical plants throughout the United States, its Territories and Possessions, that the output of the manufactured product should be shipped to various Government warehouses, zones being established therefor throughout the United States, that the Government should officially control the price, the quantities shipped to the various wholesale druggists, jobbers, dealers, retailers and pharmacies,—all these, and all manufacturing plants, to be bonded and licensed,—and that the Government should control the exportation from and importation into the United States.

The Grand Jurors, United States of America, Southern District of New York, do hereby request the co-operation of the United States Attorney for the Southern District of New York in taking up with the United States Department of Justice the subject matter, so as to cause a bill to be prepared for submission to Congress seeking the immediate enactment of broad and suitable statutes that will eliminate this evil.

Be It Further Resolved, That a copy of this Resolution be filed with the Honorable Court for the records of the Court, and a copy likewise be transmitted to the Attorney General and the United States Attorney for the Southern District of New York. (See p. —). *Albert J. Weber*, Foreman, Grand Jury, United States of America, Southern District of New York. Old Post Office Bldg., New York City.

Reaching the Adult Responsible for the Delinquent and Neglected Child.—I assume that every critical reader will agree with me that an overwhelming percentage of the cases that come to the juvenile courts of the country can be traced, either directly or indirectly, to some adult. And the problem that has always been confronting probation officers and juvenile court workers is to reach and correct that adult, and through him the child.

Adult contributors may be divided into the following classes: (1) Those who maliciously and deliberately train a child in delinquency and then enjoy the financial fruits of their work; (2) those who contribute through their own carelessness and indifference, allowing the child to take the easiest way, which is generally the wrong one; and (3) those who through their zealously and anxiety force their child into ways which end in delinquency.

Under the first class might be placed the prostitute who teaches a girl to learn her own trade, the thief who schools the youth in pocketbook snatching, shop-lifting, etc., and the burglar who instructs his pupils in the general arts of safe-robbing and house-breaking. While an adequate "contributory delinquent" law would reach all classes, it is the only way that this particular class can be reached and it is to be regretted that there are such laws in so few juvenile courts. And I might say that from my personal experience it is one of the hardest sections to get written into a juvenile court law. For some unknown reason it seems almost impossible to convince law makers that it is possible for an adult deliberately to go about making a delinquent of a child by using it for criminal practices.

In the second class, those who contribute through carelessness and indifference, we meet an entirely different proposition. Most of these cases come from the poorer and more shiftless class, making a jail sentence or a heavy fine (which a contributory law would inflict) almost an impossibility for in most cases such a disposition would not get to the root of the trouble, but at the

same time would leave the rest of the family (generally a large one) in destitute circumstances, necessitating the assistance of the state. I think that one of the greatest parts of probation work is for the officer to instill in the heads of such families a proper sense of duty to their children and the state. This oftentimes is a long, tedious process and in a great many cases can never be done. But when it is accomplished, it can be pointed to with pride and a satisfaction of knowing that another family has been pulled through a crisis and is still together. There are times when it looks as if all of the work is to go for nothing and we must admit failure. Very often at this time the taking of one or more of the children out of the home, either permanently or temporarily, has just the proper effect and causes an awakening and readjustment in the family scheme of living which enables us to place the children back in the home after a reasonable length of time and be sure that they will be supervised properly. This works very well where the parent cares for the child, but as is often the case, they would gladly relinquish their responsibility to someone else; it sometimes has a salutary effect to make them pay for the support of the child in some institution or some boarding house. We have tried this in the District of Columbia in cases where the parents could afford to pay and have found that after a time they are willing to take the children back home and properly care for them, even though it is under compulsion. Fortunately we can enforce this kind of an order by sending the parent to the workhouse under the non-support act, should he fail to pay as ordered. An objection might be made to locking the parent up, but as the children, in such cases, have already been taken out of the home, it is not working any hardship on the family.

By far the hardest class to work with are the children that come from good homes where there is ample income and good influence, but where the parents, because of their desire to have the child go the right way, are too rigid in their discipline, and do not put sufficient trust in the child or, they trust *absolutely* in the child, believing that it can do no wrong, and enforce no discipline whatever. Either very often leads to deception on the part of the child and ultimately to delinquency. The work for the probation officer in such cases is much harder than in the second class because we have a much more intelligent and sometimes resentful parent to deal with. I think it is much easier to convince a parent that they have been too lenient in their discipline than that they have been too strict. But if the officer can win the respect and the confidence of the parent and can make him see that he is really interested, very often the parent is willing to take suggestions and straighten out the trouble.

To sum up briefly, the two most effective ways of reaching the adult responsible for the delinquent and neglected child is either through an adequate contributory law, carrying a fine or imprisonment or both, or by persuasion and probably force of various kinds on the part of the probation officer. The degree of success will depend upon the "drasticness" of the contributory law and the persuasive powers of the officer.—*B. Howard Clark*, Chief Probation Officer, Washington, D. C.

PENOLOGY.

Joseph Matthew Sullivan, Boston, Massachusetts.

Irish Prison Conditions.—The inquest into the death of Thomas Ashe was concluded by the return of a verdict which has stirred Ireland profoundly. The judgment of the jury, as printed in the *Weekly Freeman* and the *Irish Weekly Independent*, reads:

"We find that the deceased, Thos. Ashe, according to the medical evidence of Prof. McWeeney, Sir Arthur Chance, and Sir Thomas Myles, died of heart failure and congestion of the lungs on the 25th Sept., and that it was caused by the punishment of taking away from his cell the bed, bedding, and boots and left to lie on the cold floor for fifty hours, and then subjected to forcible feeding in his weak condition after a hunger strike of five or six days. We censure the Castle authorities for not acting more promptly, especially when the grave condition of the deceased and other prisoners was brought under their notice on the previous Saturday by the Lord Mayor and Sir John Irwin.

"That the hunger strike was adopted against the inhuman punishment inflicted and as a protest against their being treated as criminals and demanding to be treated as political prisoners in the first division.

"We condemn forcible or mechanical feeding as an inhuman and dangerous operation, and it should be discontinued.

"That the assistant doctor called in, having no previous practice in such operations, administered unskilfully forcible feeding.

"That the taking away of the deceased's bed, bedding and boots was an unfeeling and barbarous act, and we censure the Deputy-Governor for violating the prison rules and inflicting punishment which he had no power to do; but we infer he was acting under instructions from the Prisons Board at the Castle, which refused to give evidence and documents asked for."

Shortly after the publication of this verdict Mr. Duke, the Chief Secretary, was interpellated in the House of Commons, but as he refused to answer a pertinent question, the process was short and unsatisfactory. Incidents of this kind and numerous arrests of Irishmen on trivial charges have given an impetus to Sinn Fein. De Valera is as active as ever. He is attended by throngs of people who apparently look to him for relief from unatoward conditions.—(America.)

Herein lies one of the strongest arguments imaginable against the "classification of prisoners." In Great Britain prisoners are sentenced to imprisonment in the first and second division; the first division carries with it imprisonment without hard labor; the second division includes hard labor. Political prisoners object to their being treated as common felons, hence hunger strikes, etc. I have never been able to find out on what grounds a judge determines that a prisoner shall serve in the first or second division. He makes favorites at the outset; this destroys all discipline in any prison, and makes the lot of prison officials unbearable and discipline a hollow mockery. Passing sentence is a judicial act which does not end with the mere record of the sentence on the court docket, and handing a "mittimus" to the committing official to transport the prisoner to the place of confinement. The prisons contain the mistakes of courts, police, lawyers, etc., just as the cemetery contains the blunders and mistakes of the medical fraternity. In like manner the asylums contain the mistakes, blunders, erroneous findings, and incorrect conclusions of the alienists. Of course imprisonment without labor means idleness; idleness breeds discontent and trouble; the courts seem to forget that much of the troubles of humanity originate many years preceding sentence, and then they expect prison officials to make saints out of rascals, and reform humanity where the church, home, and police have failed. American prison reformers who are always seeing perfections in foreign prisons, and laxity and imperfections at home will do well to pause and consider the above. In my foreign

travels I never saw such great perfection as our reformers at home seemed to have found in their foreign travels; prisons are blamed at times when the fault is in human nature with all its imperfections; the prison will continue to exist so long as wolfish ignorance preys upon its helpless neighbor; we must bear in mind that the human race contains beasts just as wild as lions and tigers which are to be found in the jungles of Africa. Incompetency and ignorance are the causes of many of our human errors; ignorance intrusted with power causes many abuses; but the prisons will bear a satisfactory scrutiny and comparison with most of our schoolhouses; in fact many of the prison problems of today can be traced back to the schoolhouse where the unrestrained, undisciplined youth was not corrected at the proper time but was allowed to run riot until he got beyond all legitimate control.—*Joseph Matthew Sullivan*, Boston, Massachusetts.

POLICE.

Annual Report of St. Louis Police Department.—The Annual Report of the St. Louis Police Department for 1917 is devoted to the presentation of routine police statistics and personnel data, which is of little value to students, executives or the general public.

The St. Louis Department has a Bureau of Efficiency consisting of two captains, a lieutenant and a patrolman, assigned monthly by the Chief of Police, which exercises the functions of a civil service commission in conducting examinations for appointment and promotion, which has charge of the service instruction and the service records of the members of the uniformed force and which investigates all complaints against police officers, acting as a court-martial in the case of minor offenses and preferring charges for trial before the police board in more serious cases.

The Department also publishes a weekly Police Journal which is devoted not only to the publication of formal orders and newly enacted statutes and ordinances but also to other material tending to increase the working efficiency or the personal welfare of the members of the police force.

LEONHARD FELIX FULD, *New York City*.

Legal Training for Police Officers.—"Case and Comment," the Lawyer's Magazine, calls attention in a recent number [Volume XXIV, No. 5, page 387, October, 1917] to the need for the legal training of police officers. After mentioning the efforts recently made by Harvard, Columbia, Northwestern University and the University of California to meet this need, it says that this legal training cannot be given to policemen by police officials whose knowledge of the law is almost wholly empirical, nor can it be given to them best by college professors whose knowledge of police work is wholly theoretical.

This instruction should be given to them by men of broad university culture and special training in law and in political science. It should be given to them by men who have had in addition, practical experience in police work. It should be given to them without fee, charge or expense to any police officer, since the benefit to the service resulting from this legal training of police officers will be immeasurably greater than the incidental benefit to the police officer in enabling him to secure promotion and finally, if practicable, this training should be given to police officers without expense to the city.

All of these conditions can be successfully met by encouraging able, well-educated, ambitious, young police magistrates to undertake this source of instruction of policemen in addition to the routine duties of a magistrate. In most cities the official duties of a police magistrate do not occupy his whole time

and in those cities in which police magistrates are required to sit all day they alternate a cycle of days of service on the bench with a cycle of days of rest from their judicial duties. These men are admirably suited by education and by experience to undertake this important educational work.

LEONHARD FELIX FULD.

Annual Report of New York Police Department.—The annual report of the New York Police Department for the year 1916, in the section devoted to the discussion of current police problems, devotes considerable space to the discussion of police problems arising from war conditions, to the establishment of a merit system for the members of the uniformed force, to the establishment of the Auxiliary Home Defense League, the extension and development of the curriculum of the training school and the police campaign for the reduction of street accidents and juvenile delinquency. Excellent half-tone illustrations add to the value of this section of the report for the general reader.

For the professional reader the statistical tables to which more than one hundred pages of the report are devoted possess special interest. The statistics of arrests are presented under a decimal system of crime classification which has been elaborately developed in the interests of clarity of presentation and which should be adopted by all police departments with a view to securing uniformity of statistical presentation and a common ground for comparison. Graphs, percentages, comparisons with the preceding year and elaborate analyses are added when needed for adequacy of presentation.

Of the new activities undertaken by the police during this year, of which special mention should be made, the principal ones are the systematic aid given to released convicts, the establishment of a departmental psychopathic laboratory, the organization of a police chorus, Christmas trees in station houses for the children of the poor and the extension of the juvenile police.

The Law of Illegal Public Speaking.—One of the most difficult police problems in urban communities, arising from the war, is the differentiation between the freedom of speech and its licentiousness which the police may lawfully curb in their efforts to suppress seditious gatherings and utterances. In a pamphlet of sixteen pages Magistrate Frederick B. House of New York has prepared for the use of magistrates and police officers in New York City a clear exposition of the present law on this subject, with an adequate citation of the principal decisions.

This pamphlet is deserving of the most careful study by all peace officers and by the judicial officers charged with the duty of maintaining the peace in American cities during the present international emergency.

Pennsylvania Commission on Penal Code.—Governor Brumbaugh of the State of Pennsylvania, has just appointed a commission of five to revise the penal code of the State of Pennsylvania, composed of the following persons:

Chairman, Edward M. Abbott of Philadelphia, secretary of the American Institute, and chairman of a similar committee of the State Bar Association of Pennsylvania; secretary, Wm. E. Mikell of Philadelphia, dean of the law school of the University of Pennsylvania; George C. Bradshaw, Pittsburgh, Pa., Clarence D. Coughlin, Wilkesbarre, and Lex N. Mitchell, Punxsutawny.

The duty of this Commission is to recommend to the legislature of 1919 changes in the existing criminal laws and to codify the law in so far as it is possible.—R. H. G.

REVIEWS AND CRITICISMS

HUMAN WELFARE WORK IN CHICAGO. By *Harvey C. Carbaugh*. A. C. McClurg & Co., Chicago, 1917. Pp. 262 Illustrated, 12 mo., \$1.50.

A current narrative of the educational, recreational, and philanthropic resources of Chicago. Col. Carbaugh, Judge Advocate of the U. S. Army, retired, and now secretary of the Civil Service Board of the South Park Commissioners, is editor rather than author.

Chapters compiled by him describe the work of the Art Institute, charitable and religious work, as well as neighborhood and settlement centers. Other chapters, written by experts in each field, give an account of Chicago's Public School System, the Public Library; its famous Park Systems, Musical Facilities, Public Recreational Equipment, etc., etc.

This volume, containing a great deal of information more or less familiar to the average Chicago resident, will be of real service as a compendium of knowledge to the stranger and the newcomer.

To the reader who is acquainted with the field covered, the sense of proportion in the book might well have been better. In some articles, unimportant details are given at length, while such a popular organization as the Chicago Band, for instance, is passed over with a few lines. Again, in a description of Lincoln Park, certain pieces of statuary are described, while others are omitted. The same inconsistency is observed in an otherwise valuable index list of charitable organizations. One is listed which has been out of existence for at least two years, while such well known institutions as the Parting of the Ways Home, The Central Howard Association, and the Chicago Boy's Club have been overlooked.

On the whole, however, a comprehensive idea is obtained of the diversified and extensive "Human Welfare Work" being carried on throughout the year.

The necessarily brief stories of these activities invite further study of such great preventive movements as the Juvenile Court, the Y. M. C. A., Social Settlements, Religious and Relief Agencies.

The volume is liberally illustrated and furnishes a ready reference.
F. EMORY LYON.

REPORT OF THE MINNESOTA CHILD WELFARE COMMISSION, MINNESOTA, 1917. By *William W. Hobson, et. al.* St. Paul; Office of the Commission. Room 27, State Capitol.

This report is the work of a Commission appointed by the Governor in August, 1916, to revise and codify the laws of the State relating to children. The Commission was composed of the following people: Otto W. Davis, Minneapolis; Mrs. Robbins Gilman, Minneapolis; Mr. Galen A. Merrill, Owatonna; Judge Thomas O. O'Brien, St. Paul; Judge Grier B. Orr, St. Paul; Miss Agnes L. Peterson, St. Paul; Rabbi Issaac L. Rypans, St. Paul; John B. Sanborn, St. Paul; Mrs. Andreas Ueland, Minneapolis; Charles E. Vasely, St. Paul; Judge

Edward F. Waite, Minneapolis, and Senator Albert L. Ward, Fairmont. Of this Commission, Edward F. Waite was elected Chairman, and Otto W. Davis, Secretary. The Commission appointed appropriate sub-committees and secured William W. Hobson as Executive Secretary. The work of the Commission was confined to five months. Because of the shortness of the time the Commission decided that it would be impossible to cover the entire body of laws relating to children and therefore it selected certain matters for attention which seemed to be of greatest importance.

The Report is made up of two parts, the Report itself consisting of fourteen pages and the remainder of the Report of 121 pages, consisting of forty-three bills to be presented to the Legislature. The Commission endeavored to take the laws in existence and by such amendments as they thought necessary, bring the laws relating to child welfare into a fairly unified whole. The bills that were prepared relate to five different classes of children—the defective, the illegitimate, the dependent, and neglected, and the delinquent.

Proceeding upon the fundamental idea that the State is the ultimate guardian of all children who need what they cannot provide for themselves, and what natural or legal guardians are not providing, the Commission recommended such change in the laws as would centralize responsibility for these children in the State Board of Control, and make it the duty of that Board to care for the needs of such children. The bill also provided for the organization of county child welfare boards to assist the State Board of Control in carrying out its plans. In the interest of this unification of control, one of the bills offered provided for the transfer of the management of the State Public School and the State School for the Deaf and the Blind to the State Board of Control. In the provisions for the care of defectives, the committee framed a bill for the compulsory commitment of girls and women of child-bearing age to the Board of Control for proper treatment or detention; classed as defectives are the feeble-minded, inebriates, and the insane. The bill providing for the examination of these defectives, especially the feeble-minded, states that the Board of Control may provide a person skilled in mental diagnosis to assist in the examination. The responsibility is put upon the Board for the proper care of these classes of defectives so as to secure the public welfare.

In the case of illegitimate children, the attempt is made in the bill offered by the Commission to give the illegitimate child as nearly as possible the care that a child born in wedlock receives by the simple expedient of making desertion of child or wife a felony. The bill provides for easy extradition of the man who is proved to be the father of the illegitimate child. By another bill the Commission makes a single illicit act a misdemeanor and provides that where fornication is followed by birth of issue and the absconding of the father even before birth, the offense is a felony and is extraditable. Provisions are made for safeguarding the records concerning illegitimate children.

In the case of dependent and neglected children the Commission revised the Juvenile Court Law by distinguishing between dependent

and neglected children in such a way that a child may be adjudged dependent without reflection upon a worthy parent. Another bill provides for efficient supervision over maternity hospitals, homes for children, and placing-out agencies. Still another bill was offered revising the procedure whereby a child is adopted. Under the bill offered the child must be six months actually in the care of those who desire to adopt it before the final decree may issue. It also provides for permanent annulment of a decree of adoption within five years when feeble-mindedness, epilepsy, insanity, or venereal infection develops by reason of conditions existing prior to the adoption and unknown to the adopting parents. The laws concerning desertion and non-support were changed so that the age of the child to be protected was raised enough to cover the period of compulsory school attendance. They were also made to apply to divorced fathers who had not been relieved by the court of the obligation to support their families.

The old Mothers' Pension Law, which was a system of county aid to mothers, the Commission rewrote so as to more fully enable the State and the counties to co-operate with worthy mothers in rearing future citizens. The amount which may be given was raised from \$10 to \$15 per month for one child and not exceeding \$10 for each additional child. The county boards of child welfare, which the Commission proposes, are to advise with the court concerning the granting of mothers' pensions. The Board of Control is given the responsibility of promoting efficiency and uniformity by advising and co-operating with courts and supervising and directing the county boards of child welfare with respect to methods of investigation, oversight of children, and record keeping, devising and distributing blank forms, visiting and inspecting families to whom pensions have been allowed, and in requiring such reports from clerks of courts, county boards of child welfare, and probate officers, as it deems necessary.

The Commission also made suggestions for change in the Juvenile Court Law. The purpose of the changes was to provide uniform procedure so far as practicable and to co-ordinate the Juvenile Court work with the care of other children by the State Board of Control. The Board of Control, according to the suggestions of the Commission, was to have the privilege of holding conferences with officials responsible for the enforcement of the various child welfare laws to promote economy and efficiency in the enforcement of these laws.

In short, the recommendations of the Commission and the bills submitted by them to carry out the recommendations had in view the unifying of the laws concerning children and co-ordinating them in a constructive scheme of State guidance and control. The other salient features of the report are:

1. An effort to centralize the administration of these laws in the State Board of Control.
2. The establishment of county boards of child welfare to provide such watchful care and interest in children in the county as would assist the State Board in making the administration effective.

University of Wisconsin.

J. L. GILLIN.

THE NORWEGIAN LAW CONCERNING CHILDREN BORN OUT OF WEDLOCK, AND ABSTRACT OF REPORT TO THE STORTHING. By the Councillor of State, *Castberg*. Trans. by *H. Sundby-Hansen* for the Legislative Committee of the Chicago Woman's Club, Woman's City Club, Chicago Woman's Aid, and the Eugenics Education Society. 1917. Pp. 37.

At this time when the mind of America is perhaps more than ever directed towards the problem of the unmarried mother and her child, any material which gives us access to foreign experience in this field is valued. Students of social conditions are thus indebted to the Legislative Committees of the Chicago Woman's Club, the Woman's City Club, the Chicago Woman's Aid and the Eugenics Education Society for a translation of the Norwegian law made by *H. Sundby-Hansen* and published by them. The pamphlet contains an abstract of the report to the Storting by Councillor of State *Castberg* in January, 1914, and the law as finally adopted by the Storting in April, 1915, to become effective January 1st, 1916.

The introduction to this important piece of legislation states the case of the unmarried mother and her child. Special emphasis is placed upon facts with which students of the problem are everywhere familiar, and attention is drawn to the weakening of the rising generation through the economic pressure brought to bear upon the homes in which the illegitimate child matures. Particularly important for the health of the child is the mother's physical condition just before and after confinement. The illegitimate child has a mother but legally no father and thus the responsibility and care of this child falls disproportionately upon the mother. It is well known that the mortality rate among children born out of wedlock is extremely high, a Norwegian report stating that for the period from 1896 to 1900 eighty-nine children to every one thousand legitimate births died during the first year of their life, whereas one hundred and seventy-seven children of every one thousand illegitimate births died during their first year. The maximum death rate among the illegitimate is reached in the third month, which is the time when a child most needs the care and nursing of its mother. Inadequate legal provision is undoubtedly responsible for much of this neglect.

After submitting the various questions involved in the prospective legislation to the higher local authorities and to the members of the poor commission of each parish in 1913, the well known law was introduced into the Storting in 1915. Among its main provisions are the following:

Children born out of wedlock have the same legal status in relation to the father as to the mother.

The child is entitled to support, care and education, both from its father and its mother. In the rearing of the child the economic condition of the most favorably situated of the parents is taken into account.

The child may be placed either in the care of the mother or the father. The parent who has the custody assuming the same duty as

though the child were born in wedlock. The duty of the other parent is to contribute financially.

If neither of the parents has the custody of the child a guardian is appointed, whereupon both parents contribute to its support. A guardian can be appointed at any time at the request of the mother, who sees to it that the child receives proper care.

In regard to the determination of parenthood and of obligation to support we find the following provisions:

The unmarried woman should make a statement in regard to the parenthood of her unborn child three months before she expects to be confined. The making of a false declaration concerning the identity of the father is punishable by fine or imprisonment for not more than two years. Upon receipt of this declaration the Sheriff shall immediately inform the Governor, who issues a summons for the father. Settlement out of court is prohibited. If the man admits access to the mother during the given period he may be declared the father of her child. If the court be unable to decide the question of fatherhood, the man becomes liable for the support of the child if it can be shown that he had intercourse with the mother during the given time.

The old conception of "nise plurium concubentium" is abolished and if several men have had intercourse with the woman they become collectively responsible for the support of the child. This support must be paid until the child reaches its sixteenth year, and if one of the parents is economically unable to bear any part of the expense the other can be required to pay for the entire support.

The final act of this legislation in regard to the child born out of wedlock is to give it the same right of inheritance as the legitimate child possesses.

Our opinion in regard to this legislation will indicate whether we are more concerned in our thinking with the condition of the mother or with the condition of the child. Regardless of the experience of various communities there will be many who are of the opinion that to lighten the burden which weighs upon the illegitimate child will tend merely to the increase of illegitimacy. To them it will seem that any alleviation of such a child's condition will be followed by the lowering of standards in regard to feminine chastity with its normal consequences. Such legislation when it concerns itself with inheritance will be looked upon as a direct attack upon the family in that it deprives the legitimate child of what is his by right. It is certainly open to question as to whether the hardship which an illegitimate child endures, acts as a deterrent upon any woman in a moment of passion. There may be various opinions in regard to this point. The question which greater number of social workers, however, are now coming to consider important concerns itself not so much with the sexual morality of the mother, for they feel that such a quality is difficult to define, or with the supposed danger to the home, for they believe that the family is more deeply rooted in human nature than has been recognized, but with the all important future of the child. To the writer

that social policy is good which while minimizing the cost to the State is yet of greatest benefit to the child.

One should remember that the illegitimate child is born with the same chances of mental and physical development as is the legitimate child of its own social stratum. The large percentage of criminals and prostitutes who were born out of wedlock is due more to society's attitude towards them than to any congenital weakness. Again illegitimate children when removed from their environment show developmental histories no better and no worse than the legitimate children with whom they are placed. With these things in mind, it would appear that such legislation as Norway has adopted might safely tend towards alleviating the condition of the illegitimate child, towards removing a stigma for which the child is in no way responsible, and towards a saner attitude in regard to sex ethics. Surely the mother does not benefit by any of the legislation cited above, and the child far from depriving other children of their due, is thus just beginning to secure its birthright.

Grace Church, Providence.

PERCY G. KAMMERER.

PUBLIC AFFAIRS INFORMATION SERVICE. Bulletin. Third annual cumulation, Oct. 1916-Oct. 1917; edited by *Lillian Henley*, assisted by *Katherine J. Middleton*. Pp. 490. N. Y.: The H. W. Wilson Co., 1917. Price on application.

A comparison of this issue with the previous Annuals shows a great increase in the amount of material indexed. Statistics compiled from the order department of the service show that 69 per cent more publications have been listed during the third year of the service than during the second.

The special mission of the service is to list by subject the more elusive material in print. A partial impression only of what the service attempts to index is, perhaps, obtained by a cursory glance at the key to periodical references, and list of books indexed. Although these are valuable features of the service, the fugitive material, including special reports, investigations, brochures, etc. represent more accurately where the staff expends the greatest effort.

All entries do not represent printed material. Notes, announcements and digests show the trend of public thought and action, but do not refer directly to printed matter.

Special mention should be made of how the trend of public opinion, in various States during the past year, is shown chronologically:

1. By a subject digest of the vote at the 1916 election in various States on constitutional amendments and other measures referred to the people.
2. By a digest of the inaugural messages of the governors to the Legislatures of all the States that had legislative sessions.
3. By a partial digest of the laws enacted by the 1917 Legislatures on social and economic topics.

Each of the 490 pages of this third annual cumulation contains from 35-45 references, approximately 20,000 entries in all. The subject-

headings are non-technical and fully cross-referenced so that the volume is very usable. Altogether the cumulation is a rich mine of information on every imaginable phase of social, economic and governmental affairs. As an extremely large proportion of the material is not indexed elsewhere, no research worker or reference librarian should be without this volume.

Northwestern University.

ROBERT H. GAULT.

ANNUAL REPORT OF THE CHILDREN'S COURT OF NEW YORK CITY, 1916.
Pp. 252.

The 1916 report of the Children's Court of New York City is the first report of a complete year's work of the Children's Court after its organization as a separate court from the adult courts. Presiding Justice Hoyt reviews the history of the Children's Court of the city from the time when Judge Deuel in 1895 first attempted to hear cases of children separate and apart from adult cases in the Magistrates' Courts. He follows the development through the establishment of the Children's Court for the County of New York, in the year 1902, and the Children's Court for Brooklyn in 1903, to the establishment of the court as at present constituted.

The history and description of the new Manhattan Children's Court building is also given. Two judges sit here daily.

The plan of dual hearings provided for in this building is interesting. The first hearing is held in the larger and more formal Court Room, with the judge wearing his robe. If further hearings are required, there are held in the small room, in which the judge sits without his robe. The judges alternate, sitting one day in one room and the next day in the other. The first hearing in the main room impresses upon the child and his parents the importance of the law and their responsibility to the community. The second hearing is informal and only the probation officer, the judge and parents are present.

One hundred and seventy-five thousand dollars has been appropriated for the construction of a new court in Brooklyn.

Since the establishment of the Probation Bureau, the court has succeeded in actually reducing the number of commitments from 3,682 in 1912, to 2,893 in 1916. Because of this decrease of the number of commitments, \$238,680 have been saved the city in money paid for the maintenance of children in institutions committed from the Children's Court. Last year this amount was \$102,570 less than in 1912. It is recommended that the staff of the Probation Bureau be increased to take care of the present excessive amount of work and to provide for the extension of the work to a larger number of dependency cases.

Judge Hoyt points out the need of giving the Court chancery and equity powers provided by the Constitutional Amendment fathered by the Committee on Criminal Courts which was passed for the first time in the last legislature. The 16-year age limit of the Children's

Court should be extended to include children up to the 18th year of age.

A certain number of the cases absolutely require institutional treatment and better and larger facilities of all kinds should be provided for such delinquent children. Private homes should be retained to take care of neglected children.

Observation stations for those who require detailed study before final commitment should be provided. There is a great need for institutions to take care of all grades of the feeble-minded from idiocy to the high grade moron. There are exceptional children requiring special treatment. Training schools should be established for these classes.

Finally Judge Hoyt outlines the broader aspects of the necessity for greater recreational facilities, more preventive work on the part of the churches, schools and other agencies particularly concerned with children.

There has been an actual decrease in the number of arraignments from 14,135 in 1915 to 12,425 in 1916. There has been a decrease in the arraignment on the charge of juvenile delinquency alone in all the boroughs excepting Richmond, making a net decrease since 1915 of 1,957 or 24.18%. However, there has been a net increase of 247 of dependency cases of 1916 over 1915. Despite the actual decrease in the number of arraignments, there has been an increase in the number of hearings since 1915, when 46,955 were held, and in 1916, when 47,006 were held, showing that the court is giving more careful attention to the individual case.

Of the 12,944 children arraigned in the Children's Court in 1916, 9,822 or 76% were boys and 3,122 or 24% were girls. Of the 6,079 children arraigned on the charge of juvenile delinquency, 5,929 or 97% were boys, and 150 or 2.5% were girls.

It is interesting to know that 2,738 or 45% were arraigned on charges of offense against property.

Three thousand six hundred and seventy-five children were adjudged delinquent. Three thousand five hundred and ninety-nine or 98% were boys and 76 or 2% were girls. Two thousand eight hundred and sixty-seven or 78% of the children adjudged delinquent, admitted their offenses and only 808 or 22% had to have the complaints sustained by trial.

Of the 3,675 children adjudged juvenile delinquents, 467 or 12.7% received suspended sentences; 2,417 or 65.8% were placed on probation; 424 or only 11.5% were committed to institutions, while 367 or 10% were fined.

In the case of dependency and waywardness of which there were a total of 4,907 complaints sustained, 1,790 or 36.4% were committed to institutions, and 3,117 or 63.6% were placed on probation. It is gratifying to note the large percentage which were placed under probation.

Of the 5,970 arraigned for juvenile delinquency, 2,727 were arraigned singly, 1,476 were arraigned in groups of two, while 1,767

were arraigned in groups of three or more. It is interesting to note that in offenses against property, 1,673 or 62% were arraigned in groups of two and three. This very probably means that stealing is largely a gang delinquency. Of the 507 offenses against persons, 412 or 81% were arraigned in groups of one, 62 or 12.5% in groups of two, and only 33 or 6.5% in groups of three.

It is very gratifying to note the fact that of the 12,425 children arraigned, 10,439 or 84% were arraigned for the first time, and only 1,419 or 11.4% for the second time, that 380 or 3.1% for the third time, and only 187 or 1.5% for the fourth time or more.

Of the 5,834 boy juvenile delinquents, 4,507 or 77% were from the ages of 12 to 15 inclusive, and of the 136 girl delinquents, 102 or 75% were from the ages of 12 to 15 inclusive. The older children are present in a larger majority than the younger.

PROBATION.

During the year the Probation Bureau has been established on an independent basis and a complete set of rules of instruction and guidance for the Probation Bureau have been prepared and adopted. A central statistical bureau has been established to compile the data for reports of the work.

The children on probation are now allowed to report to their officers at the schools throughout the City.

A system of indeterminate probation period has been started so that a child is discharged from probation only when the conditions have improved enough to warrant it.

The newly installed vocational and placing office has placed 157 children and 78 parents in positions during the five months in which it has been in operation.

A great number of private societies have co-operated very effectively with the Probation Bureau.

The probation officers have organized into an association, which has its committees to discuss various probation problems and to make inspections and visits to institutions whose work is closely allied with that of the children's courts.

Too many cases are assigned to the probation officers for them to handle effectively. More officers are required to maintain a good standard of work and provide for future increase of work.

At the beginning of 1916, there were 1,729 persons on probation. Four thousand two hundred and seventy-nine cases were placed on probation during the year. Of these, 3,542 were discharged during the year, leaving a total number of 2,466 remaining on probation at the end of the year. Of the cases discharged, 2,879 or 81% were discharged with improvement, 129 or 3.6% were discharged without improvement, 526 of 15% were committed to institutions, 8 or .2% absconded or were lost from oversight.

Of the 5,474 children investigated by the Probation Department, 4,034 or 74% had no previous court or institutional record. Nine hundred and eighty-one or 18% had been arrested before and dis-

charged or fined. Four hundred and fifty-nine or 8% had institutional records.

In addition to this record, 543 or 9.9% had previously been on probation. One hundred and ninety-eight were rearrested while on probation.

Seventy-three and six-tenths per cent of the children investigated were of foreign-born parents, while only 26.4% had native-born parents. A large proportion of offenders were children of Italian parents, of whom there were 1,589 or 25% of the total, or 38% of the total number of foreign-born parentage. Children of Russian, Irish, Austrian and German birth contribute respectively the next larger groups of offenders.

In 3,580 or 65% of the cases investigated, the parents were living together. In 783 or 14% the father was dead. In 548 cases or 10% the mother was dead. In 142 cases both parents were dead. In 223 cases the parents were separated.

The table showing the size of the families and the family income discloses the fact that the families of the 5,474 cases investigated included about 25,500 children.

Three thousand six hundred and fourteen or 67.1% of the cases were from families having 4 or more children.

Eight hundred and ten or 14.8% of the families had an income of \$10.00 per week or under. Two thousand four hundred and forty-two or 40.8% had from \$11.00 to \$19.00 income per week and 2,422 or 44.4% had \$20.00 and over income a week.

Of the 517 cases examined for mental deficiency, 251 were found to be mentally defective. Of the 1,056 cases examined for physical defects, 393 or 38% were found with defects. The number of mentally defective children comprised 4.6% of the total number of children investigated by the Probation Department, which does not prove that most delinquent children are feeble-minded.

Four thousand four hundred and twenty-nine or 80% of all children investigated were attending school. Five hundred and forty-five or 10% were employed and 500 or 9% were idle.

The table showing the age and grade of children in school gives the percentage of children in normal grades, the number of children retarded in school progress and the number ahead of grade. Of the 4,259 who registered in regular classes, 553 or 12.9% were accelerated, 2,147 or 50.4% were normal, whereas 1,559 or 36.7% were retarded. The Public School statistics show that the usual percentage of retarded children is about 25%. As a class therefore, delinquent children have a greater percentage of children retarded in school progress.

The total number of 76,949 contacts in way of visits and reports were made by the probation officers with the probationers discharged from oversight during the year. This is an average of 14 personal contacts between the officer and each charge. This does not include letters written to the children, parents or other people, but including these we may conclude that a great deal of splendid individual work must have been done by the officers.

In 71.3% of the cases the officers received co-operation from various social agencies, while 28.7% received no co-operation.

It is interesting to note that of the 3,532 cases concluded during the year, 970 or 27.5% were on probation three months or under. This percentage is so large because it includes most all cases terminated by commitments in institutions. One thousand seven hundred and twenty-seven or 48.9% were on probation 4 to 7 months inclusive, while 835 or 23.6% were on probation 8 months and over. It still appears that the probation periods are generally too short.

Of the 157 children registered for employment, 51 or 32% left school because of economic pressure at home, 11 or 7% because they did not pass in school, 15 or 9.6% because they wished to learn a trade, 39 or 24.8% because they preferred to work, 23 or 14.7% because the parents requested them to.

The chief probation officer hopes that as the work continues and statistical material is gathered year after year that a comparison of these yearly results will bring forth valuable sociological facts.

Committee on Criminal Courts, N. Y. City.

GEORGE EVERSON.

THE LAW OF HUMAN LIFE; THE SCRIPTURES IN THE LIGHT OF THE SCIENCE OF PSYCHOLOGY, By *Elijah V. Brookshire*. J. P. Putnam's Sons, New York. 1916. Pp. 471. \$2.50.

This book bears the marks of careful workmanship. It is prepared not by a theologian but by a member of the legal profession. It aims at a psychological interpretation of the Scriptures as opposed to the philosophical and the historical interpretations. Throughout the text, the author is dealing with a concept that is becoming, in this generation, more and more familiar to the readers of psychological literature, namely, symbolism. This concept has been developed chiefly in the hands of psychiatrists and it has become of great practical usefulness to them in the practice of their profession. Perhaps most of them are not aware that the same concept is, or is destined to be, of no little moment to the student of art and literature, to the student of Criminology and of human behavior in general; the student of Social Psychology will find this concept to be one of increasing usefulness. This last, it seems to the reviewer, is the connection that Mr. Brookshire is making in the volume under review. The symbolisms of the Scriptures point to unconscious motives which are the common possession of humankind and which, therefore, lie at the root of the development of ethics, law and religion. This book, therefore, should appeal to students of a great variety of human interests.

Norwestern University.

ROBERT H. GAULT.

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—with several charts.
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CONTENTS

EDITORIAL.

Constructive Measures for Crime Prevention..... 802

CONTRIBUTED ARTICLES.

1. Common Sense in Prison Management.....
.....*Thomas Mott Osborne* 806
2. State Supervision of Probation Work.....*Charles L. Chute* 823

CONTENTS—Continued

3. Morbid Impulses from the Medico-Legal Standpoint.....
.....*Alfred Gordon* 829
4. A Psychiatric Clinic at the Chicago House of Correction..
.....*J. H. Murray* and *Sydney Kuh* 837
5. The Women at the House of Correction in Holmesburg,
 Pennsylvania.....*Louise Stevens Bryant*, Ph. D. 844
6. A Further Extension and Revision of the Binet-Simon Scale
.....*F. Kuhlmann* 890
7. The Immoral Women as Seen in Court.....*V. V. Anderson* 902
8. Some Essentials of Constructive Criminology.....
.....*David Coombs Peyton* 911

JUDICIAL DECISIONS ON CRIMINAL LAW AND PRO-
CEDURE 918

NOTES AND ABSTRACTS..... 921

American Association of Clinical Psychologists (921)—California Mental Hygiene Society (921)—For the Employment of Convict Labor in Manufacture of War Supplies (922)—Traffic Court Report (926)—The Pulic Defender (926)—Adult Probation; Ten Years Experience in Indiana (927)—Examination for Chief Probation Officer in the Juvenile Court of Cook County, Illinois (928)—Twenty Years' Experience Under the Indeterminate Sentence Law (933)—Committees of the Institute Appointed for 1917-1918 (935)—Thirteenth Annual Report, National Child Labor Committee (937).

REVIEWS AND CRITICISMS..... 939

Problems of Subnormality, By *J. E. Wallace Wallin*, With an Introduction By *John W. Withers*, Ph. D. (939)—The Neurotic Constitution, By *Dr. Alfred Adler* (943)—Annual Report of the Children's Court of the City of New York, 1916 (945)—Negro Education, By *Thomas Jesse Jones* (947)—Standard Method of Testing Juvenile Mentality by the Binet-Simon Test, By *Norbert J. Melville* (947).

GENERAL INDEX TO VOLUME VIII.

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EDITORIAL

CONSTRUCTIVE MEASURES FOR CRIME PREVENTION

The article in the present number by Doctors J. H. Murray and Sydney Kuh entitled, "A Psychiatric Clinic at the Chicago House of Correction" should be of unusual interest to the citizens of Chicago and the state of Illinois at this time when there is so much public concern and agitation relating to what is described there as a "great wave of crime."

For several years, Dr. Kuh, especially, has had intimate touch with the psychiatric service in the House of Correction in Chicago and he is able to speak with authority concerning the mental condition of prisoners in that institution. The article covers the period 1909-1916 inclusive. In that period, the number of insane committed to the House of Correction (or, more accurately, discovered there) has almost steadily increased, year by year, from 27 in 1909 to 223 in 1916. These cases are committed for but short terms on charges of misdemeanor. A glance at the tabulations will show that of the 223 committed in 1916, nearly 200 are afflicted with forms of mental disease, relief from which is hardly in the slightest degree within the realm of possibility. Mr. John L. Whitman, the present State Superintendent of Prisons for Illinois, who during his long term of service as Superintendent of the House of Correction was strongly seconded by the Medical Superintendent, Dr. Charles Sceleth, built up in that prison a hospital equipment that is perhaps second to none among prisons in the United States. This, however, can be of practically no avail in the treatment of the great majority of the 223 cases committed for short terms in 1916. These are the offenders from whom the bulk of repeaters or recidivists come. The authors of the article referred to cite cases of insane offenders who have been committed again and again up to 100 and more times. It is a matter for congratulation that in the course of the last four years and two months 470 diagnoses of mental alienation have been made in the House of Correction and that these cases have been transferred to the Psychopathic Hospital.

The authors make recommendations that look toward much more fundamental and rational practice than anything, apparently, that is contemplated in the vociferous and unconstructive hostile criticisms of the systems of parole and probation. The value of these systems has been demonstrated. District attorneys and grand juries of contrary

mind are suspected of having formed their opinions on the basis of isolated and glaring cases. But this is aside.

They recommend (1) the appointment of an alienist as an officer of the court—available, presumably, to every court that handles criminal cases—who should make full examination in every case in which insanity is suspected; (2) the establishment of a department for the criminal insane at the Psychopathic Hospital, to which the insane should be sent directly from the courts. Even with such equipment, it is believed, a resident alienist at the House of Correction could be kept occupied with cases that would escape observation in the courts. In many cases, as is known, the so-called prison psychoses develop on a predisposed basis, after commitment to prison, and these at any rate could profitably occupy the full time of a prison alienist.

The establishment of a Psychopathic Laboratory in the Municipal Court in Chicago and in the corresponding court in Boston is pioneer work in the direction contemplated and those who are responsible for these forward impulses merit public support and gratitude. It is humanly impossible, however, for these institutions to grapple with their responsibilities without wider organization and co-operation.

In this connection, it seems to me appropriate to draw attention to measures that have been taken in certain of our states to meet the problems we have in mind. I do not know that I shall be exhaustive.

In Maine, the law provides that in all criminal cases in which the plea of insanity is raised the person shall be subjected to a period of hospital observation. One effect of this is said to be that the number of cases in which the "insanity dodge" is resorted to for defense has been decreased.

In Vermont, when a person has been indicted or committed to jail charged with an offense, he may be ordered into the custody of the State Hospital for the Insane, to be observed and detained until further order of the judge.

In New Hampshire, also, a similar law is in effect. When a person has been indicted for any offense or committed to jail to await the action of the grand jury, if he makes a plea of insanity, any justice before whom he is heard may order him into the custody of the State Hospital for the Insane for observation until further order by the court. In 1914, Virginia enacted a law to the same effect, and in Massachusetts a similar law is in effect.

Of course all of this is in the nature of locking the doors when the horse has been stolen. Notwithstanding there is this advantage: he cannot so readily be stolen a second time as under a less careful

system of fastening the doors. When we can have developed in every state an adequate system of vital and penal statistics, such as that contemplated by Dr. Victor Vaughn (this JOURNAL, V, 5, 688 ff.), and by the Commission on Uniform State Laws in their proposed model bill for Vital and Penal Statistics (this JOURNAL, VIII, 4, 484 ff. and 599 ff.) we shall know family and individual histories so much more fully than we do now that we shall be able to place our fingers upon those in our population who are, or who are likely to be, dangerously defective, and thus to take action with reference to them in the interest of the community at large *before they shall have developed into a "criminal class."* Properly equipped laboratories in our public school systems will be an important adjunct to the machinery for obtaining vital statistics.

Perhaps the legislature in its next session in Illinois could not do better, in as far as it touches the crime problem, than to open up the way for the development of hospitals for the detention and observation of the so-called criminal insane; or for the extension of the service of alienists (this JOURNAL, V, 5, 643 ff.) in the criminal courts (perhaps for both of these), and for the development of an adequate system of vital and penal statistics.

These suggestions are not made under the delusion that, if acted upon, they will prove a panacea for the crime disease. It is obvious enough that even if we bulge the roof of the court house with a first-class laboratory equipment, crowd the avenue with detention hospitals, double the number of our probation officers in the adult probation department, and thus afford the opportunity for the thorough investigation of the family and life history of every case for whom probation is requested—if we provide all these and yet choose judges who are so self-sufficient or so myopic that they will not use the tools at their hands, it will all be of no avail. This is not to separate the judges from all other public officials—and private citizens.

Finally Doctors Murray and Kuh make an inquiry: "Is it Utopian to hope for the day when sufficient time may be found in the curriculum of law schools to give their students at least some fundamentals of criminal psychology, as has been done for years in several European countries?" It is not. For instance, at Northwestern University, for several years, first by Prof. Edwin R. Keedy and now by his successor, Prof. Robert W. Millar, each class of law students has taken one course during a half year in which cases of psychopathic offenders, juvenile and adult, have been discussed, both as to their characteristics and their disposition by the courts and other institutions.

The Harvard Law School has, at any rate until recently, done something of a similar nature. These are small beginnings, but they are significant of at least an incipient trend. It is encouraging, too, that a great many young men and women, before they enter the professional school, have in most of our large colleges and universities opportunity for rather intensive training and education in the various aspects of criminology, so that many of them will go into the law school and later into the profession at least favorably disposed toward what we call constructive and fundamental measures for dealing with the crime problem. It is of equal import that through these means popular interest in criminology is being aroused and made substantial enough to support constructive measures.

ROBERT H. GAULT.

COMMON SENSE IN PRISON MANAGEMENT

THOMAS MOTT OSBORNE

For generations our penal system has presented problems of which there has seemed to be no real solution. But during the last four years, in Auburn and Sing Sing Prisons, in the State of New York, a flood of light has been thrown upon the matter. For the first time the convicts themselves have spoken; for the first time a few—lamentably few—prison officials have been intelligent enough to discard old theories and methods and to study the actual facts spread out before them; for the first time to this apparently most unsolvable of social problems we have applied the principles of democracy; and behold! to the amazement of most and the dismay of many, even in prison democracy works.

It may be clearly understood that what has taken place is not a series of mere chance occurrences. Exactly as patient and scientific study of physical disease has brought about a revolution in everything relating to surgery and medicine, and even created a new profession—that of nursing; just as patient study and careful experiment is revolutionizing our theories and practice in the case of the insane, or mentally diseased, so an opening has at last been carefully and patiently made for the application of common-sense in the treatment of the criminal—the spiritually sick. But before the widespread interest which has been aroused can be transmitted into a genuine demand for genuine prison reform, it is necessary for us to comprehend fully the lamentably unscientific nature of the foundations upon which our present prison methods rest; and to insist upon a thorough and persistent study of all the facts bearing upon the matter, from the simplest to the most complex.

What I have to say this evening is offered not as a statement of dogmatic theory, but rather as tentative suggestions drawn from four years of very close observation and study of the prison problem.

It has been my personal good fortune to study this problem of prison management from three different angles: that of the ordinary citizen; that of the prison official, and, most important of all, that of the prisoner. It has been my privilege to associate upon terms of companionship with many convicts, both during and after their terms of imprisonment—with many who are “going straight” and with some

who are still "going crooked." I have enjoyed the confidence of these men. So that to a discussion of prison questions I can bring something that has been and still is persistently forgotten or disregarded—the point of view of the prisoner.

- After all is said and done that outsiders can say and do in the way of reforming the prison, is still remains for the prisoner himself to do the important thing. If he does not see the matter as we do, our efforts are wasted. We can do nothing effectively, therefore, to solve the prison problem without understanding the man who is most concerned and gaining his co-operation.

A certain visitor came to Sing Sing not long after I became warden. She was an energetic lady of excellent character and intentions; interested, for some reason or other, in exploring the prison. As near as I can recall, she had some literary purpose in mind. I told her if she would wait while I finished some necessary business at the warden's desk, I would myself escort her through the prison. So she seated herself; and, as my business was mainly the perfunctory signing of papers, we talked. Among other things she asked what system of classification we had at Sing Sing. I told her there was none; so far as I knew there there never had been any.

"What!" she exclaimed in horror, "You put old and young offenders together?"

"Yes," I said, "but you know the old offenders can give very good advice to the youngsters, if they wish to do so; and under the new conditions they frequently do."

"But, of course, you segregate the murderers?" continued the good lady.

"Only those who are to be killed by the state."

My visitor seemed still more shocked. "Oh! that is horrible; to allow murderers to associate with the less guilty prisoners."

"They are all supposed to be guilty," I remarked. "Moreover, most of those who had had experience in prison matters and are best acquainted with the inmates seem to agree that the murderers are rather the best of the lot."

"Oh, that can't be true," my visitor protested; "there must be something so brutal about them."

"Well, I don't think you would notice any particular difference."

"I'm very sure I should," was her prompt rejoinder; "I'm positive I could recognize a murderer the moment I saw one."

"All right, when we go down into the yard I'll show you a few."

Perhaps it was unkind to take advantage of my visitor; but even

while we were talking I had decided to give her an elementary lesson in penology. I continued writing for a few moments; then touched a bell communicating with the outer office; and a tall well-built, soldierly-looking prisoner answered the summons. I gave him some papers to take to the clerk and went on with my work. A cough of interrogation came from the visitor. I turned. "That was a very fine-looking young man," said she; "what is he in here for?"

"Murder," said I; and turned back to my desk.

The lady gave a gasp and a murmur of "Oh, no—it can't be." and sank back in the chair.

In a few moments I rang again. "Send for L——. D——;" and presently a young lad of 22, straight and clear-eyed, stood before me. "How about that League matter we were discussing last night?" said I.

"Well, I've been thinking it over, Warden, and don't believe it will go. You see, it's this way—" and the young fellow gave utterance to an argument as clear as his eyes and as straight-forward as his nature.

"All right," said I; "let it go for the present and I'll take it up with you later on." The lad left the room; and once more I resumed writing.

Another cough of interrogation came from my visitor. It did not really seem possible that she would fall so easily into the trap a second time. "Now that seemed like a singularly able and sensible young man," said she; "what is he in here for?"

"Murder," said I; and finished my last signature.

The good lady was lost in thought for a few moments; then as she rose to accompany me into the prison she said plaintively; "Well, Warden Osborne, I suppose you must be right; but I've always thought that while there might be some doubt as to the appearance of other criminals, there couldn't be any when they had committed such a crime as murder. It always seemed perfectly natural and right that it should be so."

This good lady was really typical of what has been the general attitude of society toward convicted criminals. In our own minds we have determined what their character and their reaction under certain treatment ought to be, according to some theory which appealed to us; then we have proceeded cheerfully upon the assumption that, of course, our actions must be true. To ascertain the plain facts, by patient and accurate study, before forming any theories at all, has never seemed to occur to those who had to do with prisons and prisoners. The

results of this initial mistake may be found in many ponderous volumes on penology, based upon most fantastic notions as to the character of criminals, and in many penal institutions where stupidity and brutality unite to propagate every new series of crimes.

Consider, for instance, the horrible system of solitary confinement, adopted as a regular prison system in Pennsylvania after the abolition of capital punishment for the lesser crimes, and known as the "Philadelphia System." Now solitary imprisonment was not an unknown thing; political prisoners have been subjected to its horrible effects throughout the ages; yet in defiance of experience and common-sense, utterly regardless of the plainest facts in human psychology, the good Quakers of the City of Brotherly Love proceeded not only to put this infernal torture into systematic operation, but to defend and extol it. In their 1830 Annual Report to the Legislature, after the system had been in use many years, the inspectors of the Eastern Penitentiary could express themselves in this wise:

"Intemperance and thoughtless folly are the parents of crime, and the walls of a prison are generally peopled by those who have seldom seriously reflected; hence the first object of the officers of this institution is to turn the thoughts of the convict inwards upon himself, and to teach him how to think; in this solitude is a powerful aid. Hence this mode of punishment, bearing as it does with great severity upon the hardened and impenitent felon, is eminently calculated to break down his obdurate spirit."

The worthy inspectors further express this pious conviction regarding their system:

"That its permanent establishment and extension to all crimes and misdemeanors punishable by imprisonment at hard labor . . . will be consistent with the purest principles of philanthropy, and calculated to advance the interests, and sustain the elevated character of the Commonwealth of Pennsylvania."

Nor was it only those officially responsible for the actual conduct of the prisons who were enamored of this detestable system. An English writer, one Joseph Adshead, published in 1845 a book on "Prisons and Prisoners," which is largely devoted to praise of the solitary system coupled with abuse of Charles Dickens, whose "American Notes" had contained a severe criticism of the Eastern Penitentiary. The author warmly praises a certain Captain Hamilton, whom he quotes as saying:

"There is nothing humiliating in solitary confinement. The interests of society are protected by the removal of the criminal, while the new circumstances in which he is placed are precisely the most

favorable for moral improvement. It is the numerous temptations of the world—the scope which it affords for the gratification of strong passions—that overpower the better principles implanted in the heart of the most depraved of mankind. Remove these temptations—place the criminal in a situation where there are no warring influences to mislead his judgment—let him receive religious instruction, and be taught the nature and extent of his moral obligations; and when after such preparation he is left to reflection and communion with his conscience, all that human agency can effect, has probably been done for his reformation. Solitary confinement contributes to all this. It throws the mind of the criminal back upon itself. It forces him to think who has never thought before . . . Even amidst the solitude of his cell he feels that he is, in one sense, *a free man*.”

In 1849 Thomas Carlyle visited one of the London prisons:

“A prison,” as he explains, “of the exemplary or model kind. The captain of the place, a gentleman of ancient military or royal-navy habits, was one of the most perfect governors; professionally and by nature zealous for cleanliness, punctuality, good order of every kind; a humane heart and yet a strong one; soft of speech and manner, yet with an inflexible rigor of command, so far as his limits went: Iron hand in a velvet glove, as Napoleon defined it.”

“Those who have served time in prison will recognize at once this type of official; and will not be unprepared for the following evidence of his “humane heart.”)

“This excellent captain was too old a commander to complain of anything . . . The visiting magistrates, he gently regretted rather than complained, had lately taken his tread-wheel from him, men were just now pulling it down; and how he was henceforth to enforce discipline on these bad subjects was much a difficulty with him.”

As for the prisoners, the “bad subjects,” who could not be disciplined even by this perfect commander without the aid of a tread-wheel:

“You had but to look in the faces of these twelve hundred and despair, for most part, of ever commanding them at all. Miserable, distorted blockheads, the generality; ape-faces, imp-faces, angry dog-faces, heavy, sullen ox-faces; degraded, underfoot, perverse creatures, sons of indocility; greedy, mutinous darkness, and in one word, of *stupidity*, which is the general mother of such. . . . Base-natured beings, on whom, in the course of a maleficent subterranean life of London scoundrelism, the Genius of Darkness (called Satan, Devil, and other names) had now visibly impressed his seal, and had marked them out as soldiers of Chaos and of him—appointed to serve in his regiments, first of line, second ditto, and so on in their order . . . a set of unteachables, who, as you perceive, have already made up their mind that black is white; that the Devil namely is the advantageous master to serve in this world.”

Is it not strange that the great historian of the French Revolution—he who could write glorious volumes proclaiming “That a lie cannot be believed”—that sooner or later all shame and hypocrisy must recoil upon their upholders, on the strength of one look into the face of a brother man “sick in prison” should at once dismiss him as a “degraded, underfoot, perverse creature”—unteachable soldier of the Devil? Is it not strange that he who discoursed so keenly upon the “Philosophy of Clothes” should have been misled, like any ordinary shallow-pated citizen, by the hideous yellow uniform, the unshaven faces and cropped heads of the English prisoners? The subject is worthy of a new chapter of Sartor Resartus.

It was five years after Carlyle’s visit to the Model Prison that a Royal Commission, after an investigation of Birmingham Gaol, where three inmates—one a lad of fifteen—had been killed by the brutalities practiced upon them, issued a report which shocked not merely England, but the civilized world.

“It was in 1851 (writes Ives in “A History of Penal Methods), “that the murderous tyrant who has been lifted into the lasting pillory of shame in Charles Reade’s story was made governor of the gaol at Birmingham. In this modern hell upon earth the cell was the reforming force, the crank its worthy minister; and a merciless martinet was urged to carry out the model system to the very utmost; and he did. One is naturally apt to fancy that the great novelist overcolored his tale; but the whole story is preserved in an official record, and stands a lasting stain upon our comfortable self-complacency.”

One can imagine how unpleasantly disturbed at the ghastly results of their system were such gentle theorists as those who held that solitary confinement was “calculated to advance the interests and sustain the elevated character of the Commonwealth of Pennsylvania”—that it was “precisely the most favorable for moral improvement” or at least “all that human agency can effect in the way of reformation.” One can fancy the righteous wrath dyspeptic philosophers, and other believers in a tread-wheel as the best means of discipline, at the unseemly way in which the details of that report were worked into the novel which forms such a blazing indictment of prison mismanagement and cruelty—“It Is Never Too Late To Mend.”

It is worth while to glance again over Reade’s book, just to get a clearer idea of the folly and brutality of prisons in the middle of the last century. It is worth while to re-read it with some care, just to get a clearer idea of the folly and brutality of prisons at the present time; for, unfortunately, the horrors which the novelist so vividly depicted can be paralleled in some of our prisons today, where even

murders are not unknown; and there are still plenty of communities which need, like England in 1854, to be shaken out of their "comfortable self-complacency."

It is not the relative values of different prison systems we are now considering; it is the extraordinary, appalling ignorance of human nature exhibited by so many pious, well-intentioned people whose business it was to know better. What kind of creatures did they think inhabited the prisons who could be cured of wrong-doing by such treatment? One hour spent in a dark cell, one day of solitary confinement, would have shattered their logic and blasted their theories; ten minutes' frank talk with one who had been through such experiences should have been enough to destroy their smug self-confidence. But the whole affair was treated as though it rested upon an entirely different plane from that of ordinary reasoning.

The mistake of 1830, the mistake of 1854, the mistake of 1917, is one and the same; it can be clearly perceived even through Carlyle's uncouth vamping; it is the theory that the men we send to prison are "perverse," that they have deliberately chosen evil at their god; in other words, that criminals are a separate class of human beings (if indeed they are human at all), systematically and intentionally wicked.

If such were not the theory held concerning the criminal, it is inconceivable that the system of solitary confinement could ever have been adopted, or that it should still persist; it would not have been possible for such a method as the "silent system" to gain almost universal acceptance; it certainly would not have been left for the present generation to face this great social problem substantially unaltered from more than a century ago. Superficial changes, of course, there have been; the newer prisons have larger cells and modern plumbing; more or less privileges are bestowed upon the "trusties" of an "honor" prison; but fundamentally the system remains what it has always been—treating the inmates as an unthinking, unfeeling mass of iniquity—so far removed from humanity that the application of ordinary intelligence, common-sense and experience is impracticable and useless; that some special form of treatment has to be invented or discovered in order to handle them successfully.

This perverted and unintelligent theory of the criminals has led to unintelligent and brutal treatment—tread-wheels and the like; and the effect of such treatment was to crush the human beings subjected to it into something that seemed to justify the theory. Out of our prisons came a stream of physical, mental and moral wrecks, with restless eyes and shuffling gait, white with the "prison pallor," with

voices hoarse from long disuse—tragic shadows of what once were men. Then the criminologists set to work to prove that these poor creatures whom we had manufactured in our prisons were members of a “criminal class,” as evidenced by certain “stimata of criminality,” which proved that each one approximated to the “criminal type.”

It was about as intelligent and scientific as if we should dye red the hair of every prisoner, and then boldly advancing the theory that one of the distinguishing marks of a criminal is red hair, should point triumphantly to the fact that every prisoner’s hair was red as indisputable proof of the theory.

The fantastic notions of Lombroso and his followers are now pretty generally discredited, and we shall not hear much more of the “criminal class” and the “criminal type,” although it will be long, of course, before these terms become obsolete. In the meantime a new danger confronts us. All the shallow-pated prison officials, the sensational newspapers and the quack doctors of penology are now rattling off a lot of glib new fallacies in place of the old set, substituting new catch-words in place of the ones which have been worn thread-bare. Those who a short while ago were busy measuring the ears and nose of every man in prison, to make sure he belonged to the “criminal class,” are now shouting that we must “classify,” and “segregate the mental defectives.”

Now, in the use of catch-words—whether old or new, and based though they may be upon certain truths—there are very real and very serious dangers, owing to the extraordinary power which mere words have over us. Caught up by some inexperienced “expert” who may occupy an official position of enough consequence to command attention, and combined with sundry half-baked theories of his own, these phrases are put forth with solemn assurance and received by the public as a sort of magic formula which can of itself produce the desired results.

Some years ago these arose among those interested in the proper training of children a more or less violent protest against “the institution,” and the popular catch-word of the day was the “cottage system”; apparently all we had to do was to build a number of small buildings instead of one large one and all difficulties would be solved at once.

It is quite true, of course, that children can be handled more easily in small groups than in large ones; but whether more successfully or not depends upon the character of the handling rather than upon the size of the group. It has not been the dimensions of the

buildings which has made the old institutions for children so bad, but because in general the management of those institutions has been so extremely unintelligent and unimaginative.

A judge once said to me: "I should never think of sending a child to an institution; even a bad family is better than that." I said to myself: "I wonder," and fell to calculating how many of my friends and neighbors there were to whom I should be willing to confide the bringing up of my own children. I finally came to the conclusion that a common-sense formula would run thus: While a good family is probably better than a good institution and a bad family is certainly better than a bad institution, yet a good institution would be better than a bad family.

In a recent article on prison matters a responsible writer quotes the warden of a New England prison as saying to him: "I've 44 men in a criminal insane ward upstairs, many of them homicides, and I want you to watch some of the 500 as they go to meals and tell me what you think of them. I think about a third of them are defective and need medical treatment, and they are not fit to mix in with the others, but what can I do? I have to furnish a certain number in the shop each day for working on the machines under a three-year contract."

Truly a fine condition of things, if prosiners mentally or physically unfitted for work must be made slaves of a contractor. But that is not the point.

The point is this: In our enthusiasm for the cottage system, sound as the intention was, we forget that in such matters as the care of children the method used is fully as important as the end to be gained; for if your method is faulty, you can never gain the end. It is the same in dealing with criminals. "You must classify," says the penologist. Very true, classification is necessary to any well-run prison. But when you have so agreed, you have not got anywhere. What is the system by which you are going to classify? That is the vital question. "We must win in this war." Precisely: but how? You can't win the war by merely indulging in dogmatic statements that it must be won. That procedure was recognized as a failure many centuries ago. Portia of Belmont, that very wise, young person, summed it up for us: "If to do were as easy as to know what were good to do, chapels had been churches and poor men's cottages princes' palaces."

"Mental defectives must be segregated." Yes, that also would be wise, wherever the mental deficiency is sufficiently serious; but what method shall we take to ascertain who are these mental defec-

tives? Shall we trust the matter to a warden who "thinks" a certain proportion are defective? Shall we ask a casual visitor to "watch" the prisoners and then guess? There are some cynics, who, if asked on the spur of the moment to pick out mental defectives, might inadvertently begin with the warden. Some such things have happened.

Let us deal now a little in detail with the criminals.

Who are they. Well, look about you, they are everywhere; you are meeting them daily at every turn.

To begin with, every man is a potential criminal. Every vice is but a seemy side of a virtue; every crime is only misdirected energy. That which prompts a man to blow a safe is fundamentally the same desire for gain which is the foundation of legitimate business. That which leads men to plan and execute the hold-up of an express train is essentially the same craving for excitement which used to send us to climb the higher Alps or shoot big game in Central Africa, and now sends many to drive an ambulance or die in the trenches of Flanders. Lust and immorality are only perverted expressions of an instinct which itself is the noblest of earthly passions—not only perfecting the life of each human individual, but providing for the future of the race itself. The is but the shift of the balance between what is noble and what is vile; just the slightest minute action of the brain, and what is good becomes evil; just a puff of wind and the fire which was a serviceable, life-giving element becomes a destroying monster.

"It seemed grand to me, then, to be an outlaw," said Canada Blackie to his friend and biographer, Mrs. Field: "I knew no authority, and took pride in recklessness. The greatest sensation I ever had was standing with a loaded revolver over an engineer's heart and ordering him to slow down an express train for *me*! Gee! that was some sensation!" Can we not all understand and sympathize with that thrill of excitement, however much we disapprove of the particular form in which it was manifested?

A law-abiding friend of mine, standing before his comfortable open fire, described to me his feelings after he had been accused of dishonesty by the head of his business, and believed himself to be the victim of deliberate treachery and double-dealing. "I assure you," said he, "I was so besides myself with rage that as I walked up and down here in this room I just panted to kill that man; and if he had come in and stood there where you do, I should have done it without question. I had murder in my soul, if a man ever had. Now, then, can I sit in judgment upon those who commit murder when I know that I should have been guilty of it, had I had the opportunity?"

Not only have many respectable and quiet citizens, who have never gone to jail, been thus guilty of crime in thought, but many have actually committed acts, which, had the surrounding conditions been slightly different, would have landed them in a penal institution. I once heard it said to a group of men in the smoking-room after dinner: "It is a safe statement to make that every one of us here present has, at some time or other during his life, committed some criminal act." I was about to break out into indignant denial when a certain incident suddenly occurred to me, and I kept silence. So did all the others. My offense was hardly one against the moral code, and yet "riding freights" is a form of theft, after all; and had I been caught, I could have been sent to the penitentiary with perfect propriety. I have often wondered what those other men had on their consciences.

Then there are the really professional criminals who never get "sent up." They pursue their evil courses systematically, but never get caught; or if caught, know the ropes well enough to escape or postpone punishment. Some of these are men high in the social scale, who pursue their piratical practices from the safe retreat of their luxurious places of business. "What is the difference?" asked a clever, young thief. "Your Wall street banker steals a railroad; why shouldn't a pocket-book?" His logic, of course, is wretched, but man is not a very logical being, after all; and he is extremely imitative. No one can measure the amount of crime directly and indirectly caused by the corrupt politics of this free and easy country; for, of course, there is usually a very close connection between the criminal financier and the political boss, just as there is between my friend, the thief, and the lower orders of the hierarchy.

"Dear Friend Tom," writes the young man from a neighboring state, "I could mention of an experience I had since I've seen you which would startle you, from the 'mayor' down. I got 90 days, Tom, but \$150 brought me home once more. Without the necessary, I would now be eating some of the county's beans. They called me pick-pocket for three hours, but when I enlightened them I had the amount mentioned I was treated to cigars and handled like Dresden china."

(A vivid thumbnail sketch of official dishonesty—"from the mayor down!")

If the criminal of the underworld is inclined to be cynical, who can blame him? In his contact with society it has been altogether too evident that he does not belong to the only "crooked" element. Everywhere he turns he finds hypocrisy and corruption; until he gets to

feel that the whole structure of society is rotten. "Until the league started and I met you and your friends," wrote a young graduate of Sing Sing, "I did not believe there was such a thing as an honest man or woman." When such men as he unseal their lips and begin to tell of the number of times they have escaped arrest or conviction, although guilty, compared with the few times they have been punished, it gives one a new and uneasy conception of the administration of justice and a keen sense of the futility of its present methods.

There can be little doubt of this fact: that, taking everything into consideration, an extremely small proportion of criminals are actually called upon to face punishment for their misdeeds and those that do suffer are usually the less guilty—the small fry. When public opinion has been aroused and the newspapers are calling for action—then the police must "make good"; but even then, according to the statements of the underworld, it is usually "some poor slob" who gets "railroaded to prison"—while the big men duck until the storm has blown over.

In fact, the more I have come to know of crime the more I have been forced to believe that our present methods of administering justice are wretchedly inefficient and futile. A right system should in some way utilize the normal action of human nature; ours does not do so. A right way would lead to less punishment for the less guilty and a greater punishment for the more guilty; ours does not do so. A right system would be curative, not merely punitive.

The ambition of the police to make a record; the ambition of the district attorney to make a record—both records determined by the number of arrests and convictions; there lies the first difficulty. It is worse than a false standard; it completely upsets all the deeper purpose for which the machinery of the criminal law exists. And when you add to this the secret proceedings of the grand jury, you have a system as undemocratic, as productive of iniquity, as can well be imagined. The wonder is not that the thing is so bad, but that it is not very much worse. We get, on the whole, far less deplorable results than we deserve. If criminals were as bad as they are painted, the whole fabric of society would fall to pieces; because the machinery for dealing with them is so hopelessly inadequate.

On the whole we may sum up this branch of the question by quoting the remark of a witty Irish prisoner, who, at one of the early sessions of the Mutual Welfare League's executive committee, turned to me and said: "You know perfectly well, Mr. Osborne, that the only difference between us and a whole lot of people outside is that we have been caught."

"What system of classification have you at Sing Sing?" was the first question of the literary lady who thought she could recognize murderers at sight. She was echoing the most fashionable catch-word in penology at the present time: "classification." The old penologists used to divide the "criminal class" into five varieties: 1. Criminal madmen; 2. Instinctive criminals; 3. Habitual criminals; 4. Single offenders, and 5. Presumptive criminals. But the author of one of the latest books on the subject asks us to recognize eight varieties: 1. The incorrigible; 2. The low-grade feeble-minded; 3. The degenerate; 4. The seriously abnormal; 5. The insane; 6. The old rounders; 7. The feeble inebriate, and 8. The "best prisoners." It is even proposed to have "special institutions developed for each class." There seems to be no reason why we should stop at eight varieties; why not go on to eighteen—or even fifty-seven?

Of course, one can see at a glance that there are really no dividing lines between such groups; the whole thing is purely artificial, theoretical and dogmatic; just the kind of substitute for reasoning which has made of the prisons such tragic failures. There is something really pathetic about this passion for charting and docketing our fellow mortals, without any practical or substantial good to be obtained after the classification is accomplished. I think it comes from the old, childish desire to have things clear and simple and static, as if human nature ever was or could be static. Some people never outgrow the desire to have all their acquaintances, in and out of books, carefully labelled, according to types: the worthy hero, the faultless heroine, the unscrupulous villain, the comic servant—and what not. The more nearly life's stage can be set for good, old-fashioned melodrama, the more restful for our minds. I am frequently reminded of a time when I was a lad at boarding school. One of my classmates and I invented some sort of a game, when we should, I have no doubt, have been at our studies. The exact object of the game I can't recall, but it involved the personal characters of the rulers of England, listing those worthies under the headings: Very good, good, medium, bad, very bad. We almost came to blows over a difference of opinion as to the relative weight to be attached to certain considerations of moral character as contrasted to administrative efficiency. As I recollect it, I argued that a bad man couldn't be a really good king, while my companion argued that a good king couldn't be a really bad man. He had yielded a point on Henry VIII, while I conceded James I; we might possibly have even arranged a compromise on Charles I and Cromwell; but we split hopelessly and the game came to an end over Elizabeth; the maiden

queen was one too many for us, which was on the whole rather characteristic of her.

Setting aside, however, the half-baked theories of certain inexperienced "experts," it is entirely possible, as has been proved at Auburn and Sing Sing, to develop a perfectly logical and sensible system of classification, which is not only desirable, but essential in any practical prison system. A system of segregation of certain prisoners, who are unfitted for the struggle for existence unless protected—the mentally deficient—is also wise, if carefully and intelligently carried out. The various psychopathic examinations—the Binet-Simon or other tests—are useful and important aids in determining the nature of each individual problem. But these all refer, not to criminals before prison, but after they get there. For all that is vital to know of a criminal before prison is that he has committed the criminal act; for no test that man can ever invent will supersede the one test which determines absolutely whether he is a fit candidate for a prison, and that is the fact of the commission of the crime. If a man commits a serious crime, then we know that he is a criminal and should be sent to prison, and it is of no particular interest to society what is his mental condition nor what percentage of perfect mentality he registers. A crazy murderer is quite as undesirable as any other kind. A thief clever enough to steal our pocket-books is much too clever to be at large, and I, for one, want to see him behind bars as quickly as the law's delay will permit. After he is safely in prison, then the doctors may examine him and test him to their hearts' content—that is another story. The purpose of the police, the courts and the prisons is to protect society, and their first duty is to catch the man whose actual deeds show that the result of his activities is destructive, and to place him where he cannot continue to destroy; and I, for one, do not care whether he is insane, or mentally deficient, or incorrigible, or an old or a new offender; if he has stolen my pocket-book, that is quite enough to enable me to decide that he needs the prison.

One of the favorite varieties of the classifyists is the "incorrigible." He is about the first one whom our friend, the recent author who invents the eight classes of criminals, proposed to segregate. We are not told exactly what is an incorrigible, nor how we are to recognize one when we see him; but I have no doubt that we shall soon have a complete set of tests for discovering him. The fact that any normal person would tend to become incorrigible under prison discipline; that the silence and constraint, the espionage, the brutality of an ordinary penal institution is enough to throw any man off his mental

balance—this is not considered. If he misbehaves, he is an incorrigible, and the usually stupid and often brutal official has no idea of what to do with him except to punish him, thus making him worse; then “classify” and “segregate” him into a still sterner system, until he may end in the mad-house.

At the time the Mutual Welfare League began in Auburn Prison, in January, 1914, there had been in solitary confinement for over a year one John G——, an Italian prisoner familiarly known as “Coney Island.” Coney was an “incorrigible,” if ever there was one. He had been in a reformatory; he had been in prison before; he was the most unruly and refractory inmate in the whole institution. Let out of “isolation” by special grace of the warden to see the usual Thanksgiving Day “show,” he succeeded in getting into a fight before they could get him back to his cell. In January I found him in the cooler, where he had been sent for firing his plate of hash through the bars of his cell door at the keeper’s head.

“I don’t know what to do with that fellow Coney Island,” groaned the warden to me; “he is certainly incorrigible, and I think he’s crazy. The doctor and I have about decided to have him sent to Dannemora—either the asylum or the prison.”

“Personally I think you’re wrong,” said I; “I’ve talked with him and I don’t believe he’s hopeless at all. Wait until I can take up his case with the boys;” and the warden consented.

That evening a meeting of the newly formed and elected executive committee of the League was held in the warden’s office, and after the more important business had been disposed of I brought up the matter of Coney Island. Although we were just at the beginning of the League’s existence, I had already been impressed with the admirable energy, fine feeling, and remarkable efficiency shown by the group of men put forward as the representatives of the League. At the request of the men as well as the warden, I attended all the meetings both of the board of delegates and of the executive committee.

“Boys,” said I, “is there anything we can do about that fellow Coney Island? You know he’s been in solitary for over a year, and the warden is going to send him to Dannemora, as he believes him to be either incorrigible or bughouse. Personally I have my own view of the matter; what do you think?”

The secretary of the League spoke up—a seasoned old-timer with a cynical smile. “I marched by that fellow’s side once for over a year, and I don’t think there is anything serious the matter with him. Of course, he’s an impulsive Italian and the system gets on his nerves,

but if he were handled by a man with any sort of tact, he'd get along all right."

"Well, can the League do anything about it?" I urged.

The sergeant-at-arms, whose duty it was to keep order, but who was allowed to express his opinions when the spirit moved, looked up. There's a vacancy in the waiters of the south wing," he said, "and there ain't any screws (prison guards) there. Why couldn't he be put to work with us; we'd look after him all right?"

The secretary turned to one of the committee, a trusty and head janitor of the south wing. "Henry, would you take Coney and be responsible for him? See that he didn't get into any rows or make any disturbance, and behaved himself?"

Henry, a "twenty-to-life" man with thirteen years to his credit, twisted in his chair and laughed. "Well," said he, "we can try it. I guess Coney and I could get along together, and if Bill here will help keep him from knifing the other fellows, I guess we can handle him all right."

"Sure thing," was the terse comment of Bill, the sergeant-at-arms.

So the matter was decided, and it was agreed that I should "put it up" to the warden. The next day I proceeded to do so. The warden was at first decidedly adverse; he did not want to turn loose about the prison such a desperate and dangerous character. The waiters of the south wing had no officer over them—only Henry, the trusty—and there would be every opportunity for a probably insane incorrigible to make serious trouble. On the other hand I pointed out that, although it was taking a risk, yet it was about the first request the committee had made, and it would encourage just the kind of social responsibility we wished to have among the prisoners; in fact, the very thing we hoped the League might produce.

So Coney Island was taken out of solitary confinement and put into a position where he could do more damage than he had ever before had a chance to do when in prison. To the surprise of the authorities there never was the slightest trouble with him from that time on. A tireless worker, Coney set an excellent example to all the other waiters in the south wing. When the road camps were operating, the following summer, the champion base-ball team of the prison issued a challenge to the men of the "Honor Camp," and the warden gave permission to the team to be driven eighteen miles from the city one holiday—and they did not get back to the prison until some time after dark. Coney was one of the players and no one was more proud of the trust reposed in him and of his honorable fulfillment of the trust than he.

Later, when there was a vacancy in the position of electrician in the chapel, the officials of the League recommended Coney; and upon every visit home from Sing Sing, after I was made warden, some one was sure to call my attention to a grinning fellow on the stage: "Say, Coney's doing just fine!" Many of the prisoners seemed to take a sort of personal pride in the man their League had saved from the dark cell and the mad-house.

Since Coney Island's release he worked for many months hard and honestly; was much appreciated by his employers, who trusted him to go every week to the bank for a pay-roll of several thousand dollars. He is tremendously proud of his own good record, as well he might be. Would society have been benefitted if Coney Island had been classified as an incorrigible and withheld from the companionship of more intelligent and better men, from membership in the League, which restored him to society a self-respecting man?

Now, the moral of Coney Island's story is this: It is perfectly easy to say, "Classify," but what method of classification do you propose? We have been classifying men as "criminals," and where has it brought us? To a pass when the very institutions where we segregate the criminals are breeding places of crime. Now, suppose we subdivide and classify under other heads in the same dogmatic fashion? Where will it bring us?

It is easy enough to say: "Segregate the mentally deficient." By all means, but what do you mean by "mentally deficient?" It is proposed to have separate institutions for the incorrigible; what is an "incorrigible?" Speaking from a considerable knowledge gained not by sitting in a library and theorizing, but by actual experience of living and dealing with the men themselves, I am free to say that the nearest approach to incorrigible criminals I have ever encountered in prison was a small group in Sing Sing, the members of which always spoke of themselves as the "better element." It included several college graduates, some crooked lawyers—so crooked they couldn't even keep themselves out of jail, bankers who had robbed in millions instead of paltry tens or hundreds and were consequently serving short sentences instead of long ones, and some confidence men, who enjoyed a unenviable reputation in the prison because they couldn't be "on the level" even with their fellow-prisoners.

STATE SUPERVISION OF PROBATION

CHARLES L. CHUTE¹

A new method and a new spirit has been brought about in criminal jurisprudence by the development of the probation system. The method has been grafted upon an antiquated criminal court system, producing profound changes. Developing ideals of social service and social diagnosis have produced the probation method and are in turn developed and fostered by its application. And yet the application of the probation system in courts throughout the United States has been as various and inconsistent as one could well imagine. Probation has grown up here and there, in some cases spontaneously, in other cases as a borrowed idea. No two states have the same system or law. Within most states there is little uniformity of method and only a partial application of the law. Some states have a law but practically no real probation work in their courts.

The first probation law in any country was passed in Massachusetts in 1878. This was a revolutionary enactment, providing for a salaried probation officer; giving him the widest powers to investigate and recommend to the court; granting to the court the power to place on probation with no limitations whatever upon the nature of the offense or the previous convictions or age of the offender; leaving the length and conditions of probation entirely to the court's discretion.

The Massachusetts experiment was successful and the probation idea spread and developed rapidly in other states until today every state in the United States and, in addition, most foreign countries have probation laws. The example of the pioneer state has not, however, been followed in all respects. One of these is in the matter of allowing unlimited judicial discretion in applying probation. The statutes of many states have attempted to circumscribe narrowly by law the offenses for which persons may be placed on probation. In fifteen states the law applies only to children's cases. In others adults are admitted to probation only for a first offense or only in minor cases. Experience has shown that these attempts to regulate probation have failed of their purpose. The basic theory of probation is that the nature of the offense does not necessarily determine whether an offender will make good on probation, but that this depends upon

¹Secretary New York State Probation Commission.

other individual factors, such as character, mental condition and attitude, habits and home conditions. The determination of these factors calls for the finest judgment of the court, unhampered by artificial classification.

Another feature of the Massachusetts system which has not as yet been generally followed is the establishment of state supervision. This principle was incorporated in the first state-wide probation law which was enacted in Massachusetts in 1880. This law applied only to the city of Boston. The law of 1880 provided that any city or town might establish the office of salaried probation officer. The appointment was to be certified to the state prison commissioners and every probation officer was required to make a monthly report to the commissioners with such information as they might require. From that time until the establishment of the Massachusetts Commission on Probation in 1908, state supervision and direction of the developing probation work in that state was carried on by the prison commissioners. The commission on probation since its establishment has been an effective force in developing and co-ordinating the work of the probation officers throughout the state.

The first independent state commission for the supervision of probation work was established, however, in the state of New York in 1907, one year before the Massachusetts commission. The first probation law in New York was enacted in 1901, but the system at first developed slowly and irregularly. In some places good work was done, in some places bad, in most places not any. The payment of salaries to probation officers was permissive and very few communities took advantage of the law. They had not been in the habit of spending money for this purpose, and so without special campaigns in each community the courts went along on the old volunteer basis.

Under the leadership of some of the ablest social workers of the state the appointment of a special legislative commission to study the growing probation work in the courts of the state, both juvenile and adult, was secured. This commission made a thorough investigation and brought out a comprehensive report. Little effective probation work was found and no uniformity of methods. In its report to the governor in 1906 this commission said: "The appointment of probation officers has been carried into effect in but few of the courts." Describing the irregularity and inconsistency of the work then done it said: "The underlying weakness of the probation system as now conducted is to be found in the very large number of courts possessing the power of appointment of probation officers and in the absence of

any supervision, co-ordination or organization of the work of probation officers, except such as may be exercised by the courts to which they are attached. There are practically as many systems of probation as there are courts using the probation law."

To aid in curing these evils and to extend the probation service to all courts of the state, this commission recommended central state supervision. Their report said: "We are, therefore, strongly of the opinion that, while probation work must always be permitted a considerable degree of flexibility to meet local conditions and individual needs, there should be provided, nevertheless, some form of central oversight. This should involve the collection of information in regard to the extent to which probation is utilized in different portions of the state, from time to time, the manner in which probation work is carried on, and the value of the results secured. It should include the authority to make formal and detailed investigations of probation work in any given court or locality, when such are deemed advisable; it should provide for the making of suggestions to the legislature from time to time for the improvement of the probation system, and for recommendations from time to time to public authorities, judicial and executive, concerned in the administration of probation; it should involve the promotion of probation work in those localities in which it is not availed of."

As a result of the report of this commission a bill was introduced in the legislature and, with the active sympathy and support of Governor Hughes, was passed in 1907, and a permanent commission was created, composed of seven members, four of whom are appointed by the governor for terms of four years, one is designated by the state board of charities, one by the state prison commission, and the commissioner of education, member ex-officio. This commission, which is unpaid, was authorized to employ a secretary and other employees, was required to meet regularly, to "exercise general supervision over the work of probation officers," to "keep informed as to their work," to improve and extend the probation system, to collect and publish information thereon and to make recommendations. It was not given authority to appoint or remove any probation officers. Its authority is by way of investigation and recommendation, and it is sometimes the case that in a democratic community the power of recommendation may accomplish greater results than any mandatory power.

The commission has recently completed ten years of active service. What has been accomplished? For one thing a phenomenal increase in the use of probation has been brought about through

the work of the commission. In 1907 there were but 1,672 persons of all ages on probation with only 35 salaried probation officers in the state; at the close of 1917 there are 14,875 persons on probation, with 201 salaried officers in addition to about 300 volunteers.

The commission has supported much legislation for improving the system, among other laws obtaining one providing for country probation officers authorized to serve not only in the higher courts but in the courts of towns and villages, thereby establishing for the first time in the state, rural probation.

It has been again proved in New York State that the passage of a law does not necessarily bring enforcement with it and sometimes is only the first step in bringing about a reform. The passage of the probation law did not mean the establishment of effective probation throughout the state. That has been a slow, tedious process, not yet completed but far advanced in comparison with the situation of ten years ago. Every year since the New York Probation Commission started work it has reported new officers and new localities establishing probation offices. More than half the counties of the state, including all the larger ones, have county probation offices. In the larger cities there is now for the first time in sight an adequate number of probation officers.

The value of a state probation department or bureau work does not stop with its extension work. More important still is its work of standardization and public education. It should furnish information regarding the probation law and methods to all who apply and publish reports and educational literature, conduct conferences, and, most important of all, endeavor by personal visitation to improve the quality of the work which is being done and establish standards. This can only be done by frequent and direct contact with the probation offices. The visiting and investigation of probation offices by a state supervisory department or bureau is as necessary to get results in this field as is the inspection of institutions.

It cannot be contended that probation work is merely local work and so should be taken care of by local authorities. The probation work in a given community affects the entire state. If it is badly done criminals will go out from that locality into other part of the state or other states, an increasing menace, and the public of other states will pay for unnecessary institutional commitments. If it is well done good citizens will be sent out and the cost of maintaining penal institutions, both to the local community and to the entire state, will be lessened. In the state of New York it has been shown there has been a marked

falling off in the population of correctional institutions as compared with the increase in general population, traceable in a considerable degree to the growth of probation. It, therefore, seems clear that as a matter of simple economy as well as to promote the general welfare the state has a duty and an opportunity in promoting probation. Its establishment and regulation should not be left to local communities alone.

Divergent methods prevail in various states in regard to the appointment of probation officers. In the small states of Rhode Island and Vermont there are state probation officers, appointed by and serving under the direction of state boards of charities. The state probation officer in turn appoints all probation officers throughout the state. In Utah there is a Juvenile Court commission which appoints both judges and probation officers and supervises their work. In Wisconsin, also, there is a state probation officer who serves under the state board of control. His duties, however, are to supervise probation work and not to appoint local probation officers.

In the great majority of the states, probation officers are appointed by the judges of the courts in which they serve. In a few states, particularly New York and New Jersey, all probation officers are under the civil service. In Massachusetts the officers are not under civil service but the state commission on probation conducts unofficial examinations and furnishes judges with recommended lists. The experience of New York State with the appointment of all probation officers under the civil service has been highly satisfactory. The majority of these examinations are conducted with the assistance and co-operation of the state probation commission. Oral examinations are used in all cases. Practical knowledge of the duties of the office, experience in related fields and personality determine the ratings. Political appointments have been almost entirely eliminated.

Much might be said for the appointment of probation officers by a state probation commission or department in order to bring about uniformity and a higher grade of officers. The plan has not yet, however, been tried in any large state, but whether the state agency is given power to appoint or merely to supervise probation officers, as in New York and Massachusetts, one of its most important functions has been found to be that of watching appointments, suggesting candidates and co-operating with the authorities who actually make appointments so as to improve personnel, which is the all-important thing.

Experience has shown that in most courts the judges alone cannot or will not give adequate supervision to the work of probation offi-

cers. Politics enter in; many judges are not good administrators; in the minor courts their duties are engrossing and arduous. While no state supervisory department is going to prevent the evils which occur when judges are incompetent or lack independence, it has been found that state supervision can go a long way toward offsetting these evils and has not only assisted in getting better appointments but has helped greatly in holding probation officers to higher standards in their work. Not all judges are alike. Most judges, I believe, are sincerely desirous of making their probation department contribute as much as possible toward human welfare. Such judges generally welcome the assistance of a state probation commission and co-operate to the fullest extent.

The idea of state supervision of probation is new. As yet only two states have independent commissions charged exclusively with the supervision of all probation work. Besides these the states of Connecticut, New Hampshire, Colorado, Michigan and Minnesota require probation officers to report to state boards of charities and corrections or similar departments. In other states the need has been felt for effective state control or supervision.

The National Probation Association at its last conference adopted the following resolution:

Whereas, The service of state probation commissions in the states of New York and Massachusetts has gone far to promote the extension of probation and to give uniformity and efficiency to its administration, and

Whereas, Probation has advanced from a localized institution to a place of great accountability in the correctional system of many states and its extension and standardization are vital to the humane and effective application of the criminal law; be it

Resolved, That the National Probation Association urges upon state governments the creation of probation commissions to extend and supervise probation, and pledges its support to the probation officers and other agencies for humane advance in their efforts to secure the establishment of such commissions.

In the development of efficient methods for dealing with all the dependent and delinquent classes, not only state commissions, but a probation bureau in connection with one of the federal departments, has been proposed and could perform extremely valuable services in developing and co-ordinating the system throughout the nation.

MORBID IMPULSES FROM THE MEDICO-LEGAL STANDPOINT¹

ALFRED GORDON²

The study of morbid impulses is very important because of the graves consequences to which they may lead from social and medico-legal standpoints. Such a study presents multiple interesting features. First of all, the underlying basis upon which these morbid states develop. Since Morel the question of heredity began to play the most important rôle in the domain of mental pathology. It finds its corroboration also in the study of Mendelian laws of heredity.³ Morbid impulses constitute episodic manifestations in the life of neuropathic individuals.

What is neuropathy? Under this term is understood a pathological state of an individual whose psychophysical resistance is constitutionally diminished; in other words, it is a condition which is a deviation from the normal type of humanity. In such a person there is an interruption of harmonious equilibrium existing between various functions of cerebrospinal centers; the co-operation and adaptation of the latter are incomplete. There is an ataxia of thought, of sentiment, of will, of psychomotor functions.

According to the parts involved these patients form several groups which are only apparently different from each other, but under which is hidden the same individuality, viz., the neuropath.

The most important characteristic features in neuropathic individuals are found in their psychical sphere. The development of their intellectual faculties is irregular and there is a want of equilibrium in these faculties. Such individuals are only partial, incomplete beings. They may have a remarkable memory but cannot fix their attention. Their mental instability is sometimes extreme. At the same time they may be apathetic and present paroxysms of great excitability. They may be eccentric, dreamers, with romantic tendencies. They are emotional, timid, extremely sensitive, impressionable, suspicious, egotistic, haughty and may be affected with moral perversity of the gravest

¹Address delivered before the Medico-Legal Society of Philadelphia, January 29, 1918.

²Practicing alienist, 1812 Spruce street, Philadelphia.

³Cannon and Rosanoff, *J. of Nerv. & Ment. Dis.*, 1911, p. 272. and Rosanoff and Orr, *Amer. J. of Insanity*, V. lxviii, p. 221.

nature. Above all, the best illustration of the loss of psychical equilibrium is found in obsessions and morbid impulses. The latter is the consequence of the first.

What is an obsession? Normally an idea, a sentence, an image may unexpectedly invade our mind and obstinately persist. It is sufficient, then, to exercise our will to a certain extent and make this phenomenon disappear. Thus, so to speak, physiological obsession never leads to a morbid impulse. When a morbid obsession occurs, the cerebral centers are invaded by a certain image or idea, which remains fixed, and suppresses subsequently all antagonistic images or ideas. This is accomplished not without a struggle, but the tenacious idea is accompanied by a moral pain so intense that it subordinates the will and the individual, perfectly conscious of what is going on, but powerless, finds himself irresistibly forced toward acts of which he himself disapproves. The obsession leads to an impulse, and these two phenomena are in the same relationship as a thought to the act.

On the basis of our conception of the subconscious world the phenomena under discussion finds an adequate explanation. The rôle of pathogenetic forces in the causation of psychoneurotic manifestations is pretty well established. As the aim of this contribution is not the psychological aspect of the psychoneuroses, but their sociological value, the analysis of the mental processes and of the conflict between the conscious and subconscious ideas which leads to the formation of obsessions and other mental disorders characteristic of psychoneuroses, will be omitted.

The characteristic features of an obsession are therefore: (a) Lucidity as to the phenomenon; (b) energetic struggle against the invaded thought; and (c) moral torture. The elements of morbid impulses are: (a) Sudden function of a center or of a group of isolated centers without participation of reason; (b) momentary impotence of will controlling the act.

The state of consciousness, the apparent lucidity, are misleading for those who are not familiar with these disturbances and judiciary errors are readily explained.

A neuropath who becomes fatigued, whose nervous system becomes exhausted, may develop obsessions and morbid impulses. Depressive emotion, prolonged intellectual effort, a prolonged waking state, excess of any sort, abundant hemorrhages, protracted infectious diseases, disturbance of nutrition, intoxication, especially alcoholic, the sight of a capital punishment, the news of a suicide or homicide,

the recital of a murder, are all provoking causes of morbid impulses in a neuropathic individual.

A young woman of thirty-five, who was profoundly neuropathic, whose hereditary history was the most unfavorable (father syphilitic, mother alcoholic, a grandfather had paresis), had several miscarriages accompanied by tremendous losses of blood. Her recovery was of long duration. She soon developed morbid impulses. Being a butcher's wife, she assisted him in carving meat in the shop. On several occasions while handling the large knife she felt the desire to cut off the customers' heads. She realized her condition, she struggled with herself, resisted the torturing temptation. Finally once, in the presence of several customers, she began to scream; the knife fell out of her hands; trembling she begged them to remove the knife from her sight, as otherwise she would commit murder.

A young pharmacist, who has been under my care for the last two years, has frequently the almost irresistible desire to commit suicide. He is fully conscious of his condition, fights it often at the expense of his sleep. Once riding on a boat, he felt the necessity of jumping overboard. Fearing himself, he begged the passengers to tie him to a post and keep him in this position until the boat landed.

Obsessions and irresistible impulses may affect also crimes of a less important order. In kleptomania there is an irresistible impulse to possess objects which are of no value. This is frequently done by individuals who are otherwise perfectly honorable, who possess sufficient means. Here, again, they are perfectly conscious of the criminality of the act, and of the consequences to which it may lead. They struggle against this tendency, they suffer morally, but they finally succumb to the irresistible impulse.

Arson, assaults, rape, all varieties of sexual perversion may be committed by a neuropathic individual under the influence of an obsession.

What is the outlook in obsessions with irresistible impulses? The evolution of these symptoms presents nothing typical. It may be periodical and intermittent. Sometimes it appears for a short period and disappears completely. In other cases it is slow, remains stationary for months and years. In still another series of cases the symptom disappears, but recurs from the least cause.

As Magnan has well said, they are episodic symptoms in the life of a degenerate. They are incorporated in the mental state of the individual, and never become separated from him. Appearing now and then during his life, they never undergo modifications; they are always the same.

In making a diagnosis of cases of this order it should always be borne in mind that while morbid impulses for minor offenses are frequent in the neuropathic individuals in general, the irresistible impulses for acts of graver nature, as homicide and suicide, are not frequent. They are met with often in true insanities in which the individual blows out his own brains or kills, seeks revenge, because he is under the influence of a delusion or is prompted by hallucinations of a terrifying nature. When a certain patient suffers from melancholia, he is mentally tortured by his delusion of the unpardonable sin, of his physical worthlessness, of deserving punishment for imaginary misdeeds. Voices are constantly reminding him of his wrongdoings. Such an individual will seek relief from continuous torture and finally commit suicide. Sometimes his delusive ideas will run in a somewhat different channel, and he will imagine that through his sins his relatives and neighbors, wife and children will undergo punishment and will suffer; in order to save them from inevitable suffering and torture he prefers killing them himself, and he acts accordingly.

A paranoiac develops in his diseased mind a grudge against certain individuals, who for an apparently logical reason are persecuting him or trying to prevent him from obtaining a certain important position which they themselves are after. He hears their voices through the wall at night; sees them masked in his room. Another paranoiac gets a mission from God to preach, to convert the sinful men, women, communities, nations. He gets messages from the Almighty through spirits, angels, who order him to accomplish his task and destroy any obstacle on his road. Such individuals will exhibit irresistible impulses commanded by their delusions and hallucinations and commit homicide.

In paresis similar delusions may lead to identical consequences.

In dementia præcox, when the youth commences to show signs of dementia, he develops hallucinations and delusions; commits excesses and assaults of the gravest character, kills or commits suicide.

A senile dement forms delusions of being defrauded, robbed, believes himself being persecuted. Frequently erotic delusions make him plan ridiculous marriages, and if he is prevented from doing it he assaults and kills. Assaults of senile dement on very young girls or children are not uncommon.

In toxic insanities, especially alcoholic, the delirious and confusional states are frequently accompanied by delusions and hallucinations; morbid impulses are then easily formed.

In epilepsy, after the motor manifestations are over, the patient

remains in a confusional, delirious, or stuporous state, during which irresistible impulses may develop and a crime may be committed. Sometimes the epileptic attack itself may consist of a sudden irresistible impulse for attacking, assaulting, and injuring.

In determining the nature of and the motives for morbid impulses only a prolonged and thorough examination will help the medico-legal expert to form an impartial opinion.

Let us emphasize the distinctive diagnostic points as they are essential for a proper conception of these interesting phenomena.

When a lunatic assassinates, he is under the control of a delusional conception and hallucination or illusion, by which he is carried away towards the abnormal impulse. The latter has a special character, viz., unconsciousness of the act; automatism is the essential feature.

When a morbid impulse is the result of an obsession in a neuro-pathic individual, the characteristic features of the act are: The lucidity of consciousness, the tormenting mental struggle before the act is accomplished, the realization of the horror of the act. At the same time the state of anxiety of the patient is accompanied by cardiac palpitation, acceleration of the pulse, headache, tremor, perspiration, etc. All these symptoms occur in an individual whose mentality is abnormal, irregular, asymmetrical and without equilibrium. In such an individual the soma will frequently be found deviated from normal; there will be present many stigmata of physical degeneration, disturbed functions of the viscera, of tissues, or organs. A profound study of his own life, of his reactions to external and internal stimuli, of his adaptability to surroundings, also of his family history, of the hereditary features—such a study is indispensable in making a diagnosis.

MEDICO-LEGAL CONSIDERATIONS

The question of responsibility of individuals presenting morbid impulses is of the greatest moment from a social and medico-legal points of view. It is frequently accompanied by difficulties, and has led not infrequently to many judiciary errors.

The primitive society of mankind recognized crime as a punishable act, irrespective of any other consideration. The criminal was always punished, no matter what his mental state was. Ancient legislation ignored entirely the question of irresponsibility. The Romans were the first who distinguished between *compos* and *non compos mentis*. But the great difficulty was to determine under what condition an individual ceases to be *compos mentis*. Prejudices, errors of all sorts, religious and political passions, interfered with the proper

understanding of cerebral functions, of genesis of ideas and of their manner of manifestations. Even the humane principles of the French Revolution were unable to eradicate from the minds of the legislators the deep-seated ideas of moral responsibility.

With the advent of Pinel and his school a new era entered the field. With him the old ideas suffered a decided blow. He succeeded in convincing human minds that insanity was a disease and that there was no crime if the criminal was insane while committing it. Gradually the field of responsibility became wider and wider. The criminologists of the new anthropological school, and with them the psychiatrist and all students of normal and abnormal psychology, jurists and enlightened laymen, all admit now that a neuropath, as defined, presenting episodic paroxysms of pathological impulses cannot be considered fully responsible for his criminal tendencies and acts, and that instead of being committed to prison, he should be removed from society and placed safely to undergo medical treatment.

The medico-legal literature is abundant with examples of indiscriminate conviction of this category of individuals. Notwithstanding the considerable work of the psychiatrist and the incessant labor of the students of psychology and of the evident and flagrant injustice to mankind, some jurists are loath to accept the humane and scientific principles laid down by the workers in this field of human knowledge. It is, of course, proper to advise, as they do, to moderate the passions and to learn to control them, but this is possible only for a brain free from any hereditary or acquired taint. It is just as difficult to control and direct the operation of a brain whose anatomical and functional integrity is affected as it is to hold oneself straight with a spinal column which is scoliosed or otherwise deviated.

The degenerates with morbid impulses are, therefore, irresponsible; but what is the degree of their responsibility between the acts, viz., during the lucid intervals? Here jurists, alienists, anthropologists are not exactly of the same opinion.

The old classical school of criminology believes in so-called *partial* responsibility. They say that because an abnormal brain, although the patient is not insane, means an abnormal will, and, therefore, an abnormal conception of right and wrong, the law should impose only partial punishment. The modern psychiatric views, the glory of which belongs mostly to the French school and especially to Magnan and his pupils, are based upon a different conception of degeneracy and criminality. Lombroso, Ferri, Garofalo, in Italy; Broca, Brodier, Manouvrier, Lacassagne, in France, have laid the foundation for the mod-

ern anthropological school. According to the anthropologist the criminal is under two kinds of influences: Intrinsic or individual and extrinsic or social. This double responsibility in a neuropathic individual is nil, and his irresponsibility is complete at all periods of his life; its root lies in the heredity and in the morbid impulses which are not present in normal beings.

When an expert is called upon to give his scientific opinion on crime committed under the influence of an irresistible impulse, he has to consider not only the crime, but also and mainly the criminal. As to the criminal, it must be determined whether he is insane or only a neuropathic individual affected with obsessions and morbid impulses. In both cases a thorough and careful examination is absolutely necessary.

When the crime is committed without a motive, when it is accompanied by a perfect integrity of conscience, when it is preceded by a mental struggle, there is no doubt that it was the result of a morbid obsession. In insanity the expert will sometimes encounter difficulties. In the first stages of a mental affection, in which a perverted mode of thinking, feeling, and acting is not easily recognizable; an epilepsy, when between the attacks the individual is comparatively lucid; in some cases of paranoia, when the patient will skilfully conceal the subject of his delusion—in such cases the expert will have to surround himself with all possible precautions, obtain detailed personal and family histories, interrogate the criminal at various times before he decides the question of insanity, viz., responsibility. The rôle of the expert in these conditions must consist not only of giving a personal impression more or less justified by his own experience, but also of presenting evidence which will be understood by laymen.

The determination of the degree of responsibility of a criminal should therefore be placed in the hands of an alienist. He only is capable to determine early stages of insanity, and he alone is able to determine, apart from insanity, the degree of mental control, of inhibitory power, of a delinquent who presents mental stigmata of degeneracy.

There is a frequent conflict between medical and legal conceptions of insanity. The law admits that a man with one fixed delusion may be sane on every subject except when he touches upon the delusive thought, and some consequently argue that he can be considered sane before or after a crime is committed, but insane during the act. From a medical standpoint such an argument is unscientific, for where there are delusive ideas there is a functionally disturbed brain. A certain

delusion may be formed and remain fixed, and by reason of this fact, the brain must be considered diseased. Misconceptions with misinterpretations may become manifested at any moment. An individual thus affected should by no means be considered "responsible before the law" before or after the crime.

I will conclude with the following propositions:

The legal conception of responsibility is not in accordance with the principles of science, and does not satisfy the practical exigencies of life. An alienist should be called upon to examine such a criminal. Administration of justice in such cases should be confided to a jurist and to an alienist.

Administration of houses of correction should be placed in the hands of alienists and pedagogues.

Youthful criminals should be placed, not in prisons, but in special institutions where they shall receive medical attention.

Conviction of criminals intellectually and morally defective is unjust and should be replaced by prophylactic measures which form a part of social hygiene.

A PSYCHIATRIC CLINIC AT THE CHICAGO HOUSE OF CORRECTION

J. H. MURRAY and SYDNEY KUH¹

In recent years much has been said, in a more or less speculative way, of the causative factors of crime. That the etiology of many violations of law may be found in various forms of insanity may again be demonstrated by the following statistics, which we have compiled from the records of the House of Correction and the Scleth Emergency Hospital for the years 1909 to 1916 inclusive.

In 1912 a clinic was established at the House of Correction Hospital for the study of nervous and mental diseases. The establishing of the clinic apparently has marked a new era in the handling of prisoners in this institution. It meant that inmates who were mentally deficient and who because of such deficiency were unable to perform the duties assigned to them would not be punished, there would be no solitary confinement, no deprivation of privileges, but on the contrary they would be given such care and treatment as the individual case might require.

Inmates are brought to the attention of this clinic through the following sources:

1. By the resident physician examining all new inmates on admission to the institution.
2. By relatives who request neurological examinations.
3. By the recommendation of the court.
4. By the reports of guards who notice peculiarity in demeanor of an inmate.

In any instance he is taken to the hospital for observation. The resident physician of the department of neurology writes a mental history of the case and obtains a statement from relatives concerning the past life, education and behavior of the patient.

When the attending alienist arrives, the resident physician presents the patient with his record while in the hospital, together with such other information bearing on the case as he has been able to obtain.

Under present existing conditions many cases pass through the

¹Practicing alienists in Chicago and members of the medical staff of the Chicago House of Correction.

institution without being brought to the attention of the neurological department for the following reasons:

1. Because of the large number of daily admissions to the institution, (averaging fifty prisoners and twenty emergency cases for each twenty-four hours).

2. The resident physician has only a few minutes for examinations, due to the fact that prisoners must be in their cells at a very early hour.

3. The guards are not trained in psychiatry.

4. The disinterest shown by relatives.

5. The court sends an individual with a mittimus on which is written "hospital recommendation." In many cases it is a question what the court wishes for this prisoner. The investigation of the court could be summarized and mailed to the proper hospital department where diagnoses could be made with accuracy and dispatch. The examination may have one of the following results:

- a. He may be committed to the Psychopathic Hospital following the first examination, because his symptoms are quite definitely those of mental disease.

- b. He may be held for laboratory findings or reports from other departments of the medical staff (as, for instance, the report of the oculist in suspected cases of general paresis, brain tumor, etc.).

- c. A longer period of observation may be required.

- d. He may be discharged from the neurological department. No inmate, to our knowledge, has ever failed to be subjected to an examination after such case had been referred to the neurological department for investigation by our staff physicians, or a request made from some source outside of the institution.

Oftimes, in fact in eighty per cent of our cases, repeated examinations are made, many times covering a period of more than a month, before all essential data can be collected from outside sources, necessary laboratory work done and the patient observed sufficiently to answer the question whether or not he may be liberated with reasonable assurance that he will not become a menace to society.

Our observations have demonstrated that commitment to a penal institution is in many cases a death sentence. We have learned that if a patient suffering from general paresis is exposed to cold and dampness, such exposure may pave the way for an acute attack of illness with resulting death.

Who is to blame for sending us mental defectives? One particular court? One judge? Our records will show that no court with

criminal jurisdiction in Chicago has been exempt from committing insane cases to the House of Correction. That the courts should make better arrangements for the handling of mental cases is well illustrated by the following tables:

TABLE I.

TOTAL NUMBER OF CASES IN HOSPITAL FOR TREATMENT.

Years	1909	1910	1911	1912	1913	1914	1915	1916
Cases	1864	2101	2549	3118	4753	4642	4252	5639

Of the number above cited, 1,822 examinations have been made by the neurological department since 1912; there were of this number six hundred and thirty-five committable cases,² four cases of paralysis agitans, and one case of acromegaly. The remaining 1,182 cases were hysteria, neurasthenia, chorea and chronic alcoholism.

TABLE II.

SHOWING THE MANNER OF CLASSIFICATION AND THE NUMBER COMMITTED IN THE CORRESPONDING YEAR.

	1909	1910	1911	1912	1913	1914	1915	1916
Dementia precox	8	4	15	6	24	28	51	109
General paresis	8	2	5	6	17	26	32	56
Senile dementia	1	3	2	1	3	5	5	12
Alcoholic psychosis	4	2	7	3	6	15	10	19
Manic depressive	3	2	3	2	5	4	5	3
Tabo-Paresis	1	1	1	0	0	2	2	11
Juvenile paresis	0	0	0	0	0	0	0	1
Paranoia	1	1	2	1	2	2	5	4
Huntington's chorea	0	0	0	0	0	0	1	0
Feeble-minded	0	0	0	1	1	2	1	2
Epileptic psychosis	1	0	1	1	0	3	3	3
Traumatic psychosis	0	0	0	0	0	2	0	3
Korsakoff's syndrome	0	0	0	0	0	2	0	0
Toxic psychosis	0	0	0	0	0	1	0	0
Exhaustion psychosis	0	0	0	0	0	0	2	0

With the exception of two cases of dementia precox and four cases of general paresis all of the above cited cases were sent to the psychopathic hospital. The former were released to relatives who had the patients taken to private sanitariums, the latter four died while inmates of this institution.

We would call attention to the fact that during the three years and ten months covered by this report prior to the establishment of

²After the establishment of the clinic we very soon learned that the juries composed of laymen, who in those days decided the fate of the inmates at the detention hospital, would not, as a rule, commit cases to the hospitals for the insane unless the symptoms were exceedingly marked, and often not even then. For this reason many cases of undoubted insanity discovered in the clinic were not transferred to the psychopathic hospital. Since a commission has taken the place of a lay jury, this difficulty has ceased to exist, but even now we do not dare refer borderland cases, since there is no adequate provision for their care.

a clinic, only one hundred and nineteen cases were committed to the psychopathic hospital, while after the advent of the alienist four hundred and seventy diagnoses were made and the patients transferred to the detention hospital within four years and two months.

While the average increase in daily population has been about one hundred, yet positive cases have more than trebled, consequently we must assume that the greatest number of mental defectives passed through the institution undetected prior to 1912.

The average age of dementia precox was 29 years, of general paresis 51 years, of tabo-paresis 44 years, and of alcoholic psychosis 41 years. In three per cent of general paresis a positive history of lues was found on the records. Whether this small percentage of definite luetic histories was due to the pronounced dementia of the patient or to the inability of the history writer to obtain such information, we are unable to say. The one case of toxic psychosis was believed to be due to lead poisoning.

Perhaps the most striking feature of the above table is the relatively small number of alcoholic psychoses, which we believe can be explained by two facts:

1. Doctor Scelesh's method of handling chronic alcoholism.
2. That many cases are kept in the hospital each year until they can again assume their citizenship, without being a menace, although they have had distinctive findings of alcoholic psychosis. Of the entire number of cases committed fifty-eight were women.

The following cases are interesting from the fact that they were known to be mentally diseased before commitment to this hospital:

F. C., 26—Divorced; linotype operator. Arrested on a charge of vagrancy. Ran away from home five years previously. He would sit in his cell talking and laughing to himself. When removed to the hospital he became very apathetic. Had auditory hallucinations. Diagnosis, dementia precox.

J. H., 52—Single; laborer (deckhand). Patient stated that he had been drinking since he was twenty years old. Brought to the hospital because he became noisy in the station house. July 25, 1916, said he would like to commit suicide but had changed his mind since he received the \$10,000 which was due him. July 26, 1916, insists that he is a physician and a specialist in all diseases. Escaped from restraints and attempted to turn "hand-springs." Diagnosis, alcoholic psychosis.

A. B., 49—Married; tailor. Disorderly conduct. Referred from detention hospital because he was thought to be suffering from delirium

tremens. No evidence of alcoholism could be found. Patient maniacal and attempted to bite attendants. Calling upon God to deliver him from his enemies. Diagnosis, manic depressive.

A. L., 21—Single; packer. Indecent exposure (second offense). Family history: Mother a suicide; father chronic alcoholic and very eccentric. Personal habits: Smokes, drinks brandy and beer. Had convulsive seizures for past five years, the attacks occurring about every three months. He was irritable and easily made angry. Restless and negativistic. Memory, judgment and ethical conceptions poor. Diagnosis, epileptic psychosis.

P. O. N., 40—Married; cabinet maker. Assault with intent to kill. Family history negative. Present illness began six months before admission to the hospital by loss of memory and the delusion that his wife was in the House of Correction for adultery. He stated that he was afraid to go home because his neighbors would stone him to death. Very irritable and easily made angry. Diagnosis, paranoia.

F. D., 29—Single. Assaulting his mother. Is now on parole from State Hospital for Insane. Family history negative. Onset of illness six years ago. The first unusual thing his mother noticed was his constant talking to himself. His memory had been bad "for a long time." Physical examinations showed exaggerated patellar reflexes. Mentally depressed. Stereotyped acts. Memory very poor. Diagnosis, dementia precox.

It is a deplorable fact that cases are time and time again recommitted to the House of Correction after once having been inmates to a state hospital for the insane, an occurrence which is, in many instances, the result of the custom existing in our state institutions of discharging uncured and not infrequently incurable cases. For illustration:

A. P., 52—Single; female. Committed in 1909 from this institution to the psychopathic hospital as a manic-depressive. In 1911 we find the same individual once more "doing time" in the House of Correction. She was here one week, became maniacal and necessity demanded that she be again committed to the psychopathic hospital. Again in 1914 it became necessary to commit her to the psychopathic hospital. A careful study of this girl's record elicits the astounding fact that she has been committed to the House of Correction more than one hundred times. Each time for some of the lesser statutory violations: Drunkenness, disorderly conduct and petty larceny. These commitments have covered a period of sixteen years.³

³Since this has been written, A. P. has again been discharged from the state institution and promptly rearrested and brought to the House of Correction.

A. C., 32—Female; single. Committed to this institution thirty-one times, transferred to the psychopathic on two separate occasions as dementia precox. Our last report on this patient was received in December, 1916, at which time she was an inmate of the psychopathic hospital, having been picked up by the police.

N. R., 32—Male; single. An escaped inmate of one of our state insane asylums, committed to this institution on a charge of assault. This patient presented the most pronounced stereotyped actions that have come under our observation in this institution. He would stand in grotesque positions and assume unusual attitudes for incredible periods. He could recall neither the assault nor the incidents which led up to it. When questioned as to where he had been working, he stated that the last five years of his life were spent as an inmate of one of our state asylums. He was committed to the psychopathic hospital as a case of dementia precox.

Quite a large number of cases come to the hospital as chronic alcoholics, when their acts alone would seem to stamp them as mental defectives, as in the cases of:

J. C., 19—Single; male. This man jumped off a bridge into the river, was pulled out by the police and rushed to our hospital on a diagnosis of alcoholism. On being questioned by our resident physician as to the reason for his act, he stated that an angel came into his room and then quietly walked out of the house. The voice of God told him to follow; this he did, and when the angel walked into the river, he, the patient, followed. This patient absolutely denied ever having tasted alcoholic beverages and this statement was later substantiated by his parents. The marked tremor which the boy had before the time of his admission to the hospital was due to the low temperature of the water of the river and not to alcohol. Diagnosis in this case was dementia precox. The boy was later taken by his parents to the psychopathic hospital.

F. L., 49—Male; single. This man was picked up on the street by the police and brought to the hospital with a diagnosis of chronic alcoholism. Patient denied drinking. He was disoriented as to time and place. The signs of dementia were quite pronounced, there was a fine constant tremor of the hand and tongue, an exaggeration of patellar reflexes, the pupils were unequal, irregular, and reacted sluggishly to light. The Wasserman reaction of the spinal fluid was positive; there was pleocytosis and the Ross-Jones modification of Nonne's was positive. The diagnosis in this case was general paresis and the patient was sent to the psychopathic hospital as such.

What is the most economic and efficient method of preventing institutions of the character of the House of Correction from becoming a clearing house for mental defectives? No one can realize more fully the injustice done to these unfortunates than we who are in daily contact with them.

As a remedy for this rapidly increasing menace we would submit the following proposition, which would of necessity require a change in the procedure of the court.

To appoint an alienist as an officer of the court, whose duty it would be to investigate the reports of the officers or persons making the complaints in all cases where the nature of the act or the circumstances under which the act was committed would tend to arouse suspicion of mental abnormality.

He would require, and should have, the assistance of the entire staff of ambulance surgeons in reporting such cases.

A department should be established in the psychopathic hospital devoted exclusively to the investigation and observation of the criminally insane. A resident alienist at the House of Correction would undoubtedly be kept very busy examining those defectives who even under this plan would escape detection in the courts. Immediately upon the establishment of a positive diagnosis by the alienist of some mental disease in the person in custody, he should be transferred to this department at the psychopathic hospital for the criminal insane, and from there taken to the County Court and committed to some state institution for the insane where he could receive the care and treatment which his case required.

There is no doubt in our minds that quite a number of lives could be prolonged if such cases were not committed to penal institutions. Perhaps a cure could be obtained in some cases, which now for lack of proper treatment become incurable. The plan would eliminate the repeated appearances of insane violators of law in court, would lessen the cost of the upkeep of the ambulance service, decrease the amount necessary to maintain the city hospital and automatically protect the patient and those with whom he comes in contact.

Is it Utopian to hope for the day when sufficient time may be found in the curriculum of law schools to give their students at least the fundamentals of criminal psychology, as has been done for years in some European countries? Not only would such a change result in a better administration of law, but it could not but help lead to an improvement in the laws themselves.

THE WOMEN AT THE HOUSE OF CORRECTION IN HOLMESBURG, PENNSYLVANIA

LOUISE STEVENS BRYANT, PH. D.¹

INTRODUCTORY NOTE

The following report is the result of an investigation undertaken at the request of ex-Director Dripps of the Department of Public Safety. During his temporary holding of office, Mr. Dripps attempted to initiate certain administrative changes in the House of Correction, which should bring the work of that institution into line with modern principles and methods of corrective treatment as applied to minor offenders. Among the suggestions made by Dr. Hastings H. Hart and Mr. James A. Leonard, who conducted a brief but effective investigation of the Bureau of Corrections for Director Porter, was the following:

"We would particularly recommend the adoption of a systematic plan for the complete study of the physical and mental condition of each woman received, and for the classification of such insane or feeble-minded as may be found and for the transfer of those individuals to suitable institutions provided for their care. Every effort should be made to prevent their getting back into society where they become a source of contamination and infection and a constant burden to the community." (P. 28).

It was with the idea of defining the limits of such a plan of clinical diagnosis and treatment that the present study was undertaken. Our understanding was that a survey was to be made of a large enough group to be representative of the women as a whole and that this survey should consist of a preliminary examination of individual cases and the assignment of each woman to specialists in medical and psychiatric sciences who should as a result make an authoritative diagnosis. The work of the preliminary examiner was also to extend to the gathering of such outside data as might be needed by the specialists to complete their estimates. This expert service was in our understanding to be rendered by a board of physicians appointed by Mr. Dripps to serve in an advisory medical capacity. As a matter of fact this advisory board never was formed though the preliminary examinations were made. It follows that the estimates of individual

¹In charge of the Department of Research and Statistics, Municipal Court, Philadelphia.

women are based upon an examination avowedly of a somewhat superficial character, though they are even so more thorough than any examination heretofore given to inmates of the House of Correction. It must not be forgotten, however, that the statements as to physical condition and mentality are tentative and in the nature of recommendations for further attention rather than conclusive or authoritative.

The original report was submitted in July, 1916. Since that time many changes have been made in the administration of the Institution, notably the installation of lights in the cells, improvement in food and service, the permanent provision for recreation and gainful occupation, and probation service, and most recently a comprehensive system of medical treatment.

About one in every five persons committed to the House of Correction of the city of Philadelphia is a woman. The number of commitments of women averages about one thousand yearly. Owing to the fact that many women are committed several times during the year that figure does not accurately represent the number of women offenders. Thus during 1915 out of 1,024 commitments of women there were involved only 816 individuals.² This means that twenty-five per cent, or one in four of the women were committed at least twice during the year. This number varies little from year to year, and does not form an alarming proportion of the total population. In many ways the women present a different sort of social problem from that of the more numerous male offenders, and it was with the idea of determining the nature of this problem that the present study was undertaken.

METHOD AND EXTENT OF STUDY

The study covered the period between December 17, 1915, and March 17, 1916, during which time I went daily to the House of Correction. Some time was consumed in general observation of the place and of the women at work, at meals and at play. Information was secured from the docket in regard to all woman inmates during that period. Extended conversations were had with the various officials, particularly the chief matron and her assistants, and much valuable information was gained in this way. I was frequently present also when the women were being received, getting in this way a quite

²These figures resulted from a special study of the docket in which the names and number of commitments of all women were secured. They do not correspond to the figures given by the statistician at the institution, who reports 1,032 commitments without comment as to the actual number of women involved. As we have no means of checking up to detect the missing 8 and as the differences are negligible for statistical purposes, we shall retain our figures throughout the study.

different impression of the real character of the women than would be obtainable after they had been cleaned and dressed and rested and established in the daily institutional routine. After a general insight into the place and its inmates had been gained, I started examining individual women. The method of examination was that of quite informal interviews, in which I attempted to get the woman's own story of her life, beginning with the events leading up the commitment, and working backward. Where there was any reluctance shown in answering questions I did not press for details, as my interest was not so much in ascertaining facts as it was in gaining an insight into the woman's mental condition and her point of view about life. For the most part the women seemed ready to talk. I followed up their stories to a certain extent, especially in cases of first commitments, or where there seemed to be some question of injustice in the commitment. Interviews with families, neighbors and welfare agencies familiar with the women were obtained by two field workers doing volunteer service as part of their training in the Pennsylvania School for Social Service. In most cases I talked with the matrons about the women, getting from them the details as to the working capacity of the inmates and their ability to get along with their companions. Records were obtained for 118 women, of whom 102 were white and sixteen were colored. This number is equal to the average daily population during the period under observation.

The women selected for special study differed slightly from the entire group in that all the women committed from the Municipal Court for disorderly street walking, and all first timers were examined. This made a proportionately larger group of prostitutes, 36% as compared with 19% of all women there, and 31% serving their first term as compared with 23% for the whole group.

Partly because of the somewhat selected character of the group studied and partly in order to have information for a greater number of cases, general information was taken from the docket in regard to all women in the institution from December 23, 1915, to April 14, 1916, and tabulated for three hundred cases. As this more general information serves well as a background for the more detailed study it will be given first. In each case seventeen details were secured as follows:

Term, Charge, Number of Commitments, Occupation, Age, Height, Weight, Religion, Literacy, Alcoholic Habit, Color, Civil Conditions, Number of Living Children, Time Out of Institution Since Last Term and the Magistrate Committing.

This is part of the information secured at the time of entrance from each individual. As the questions are given very rapidly and there is no effort to verify any details, for example, as to literacy, their accuracy is open to some question. The two questions as to literacy and drink habits are given very rapidly and in a single breath "Do you read, write and drink?" and at once the examiner without waiting to hear the reply, turns to the clerk and says, "Light, brown, blue, scar on nose—," which details as to coloring and markings serve for identifications. Occasionally the woman protests about the drink and then she is put down as total abstainer, or in rare cases as a moderate drinker. The coloring given is frequently most inaccurate. However, certain of the docket details seem to have some significance.

GENERAL CONDITION OF LIFE IN THE INSTITUTION

One of the most striking features about the House of Correction is the apparent passivity of the inmates. It is rare that any discontent is shown or expressed. The matrons and other officers are uniformly kind in their manner toward and treatment of their wards. There is considerable effort on the part of matrons to help the inmates, and on their discharge the matrons go down into their sparsely filled pockets to give the women carfare and money for the next meal. They also try to secure work for them among their friends, and keep in touch with them by letter. This is evidence of genuine devotion especially when the matrons' long hours of constant duty are considered.

After a few weeks of observation the very absence of discontent appears as a disadvantage, and one is convinced that there is literally nothing to stimulate hope or ambition for better things on the part of the women. The work is of a deadening character. Perhaps the single worst feature is that there is no progress possible in most of the activities. The women are assigned on entrance to a particular gang, and kept there day after day. The kinds of work arranged in order from the least skilled to the most are scrubbing, wing work (the care of the cells), bathroom work, heavy laundry, sewing patches, sewing garments and mattresses, matrons' chamberwork, hospital attendant, fine laundry, matrons' and officers' kitchen, service in the houses of superintendent and warden. In each department one or two women are assigned as runners to the officers in charge, taking their place with their gang when not on errands. The great majority are employed in scrubbing and heavy laundry work, where the work is heavy and exhausting and where there is no room for learning either helpful pro-

cesses or self direction. The daily schedule of work for women as it was when the investigation begun was as follows:

- 6:00—Awakened by night watch.
- 6:30—Day force comes on duty. Cells opened. Women dress.
- 6:45—Breakfast.
- 7:15—Women in wings (Cell Block) with no occupation.
- 7:45—Women go to work—laundry, scrubbing, sewing, mending.
- 11:45—Dinner.
- 12:15—Women again in wings, without occupation.
- 1:00-2:00—Outdoor recreation for all but fine laundry workers.
- 2:00—Women return to *same work* as morning.
 - Women in fine laundry go back to work at 12:45.
- 4:30—Work ends.
- 4:45—Supper.
- 5:30—Every cell locked and ready for the night.
- 6:30—Night watch (matron) comes on duty.
 - Day matrons alternate nights, being on duty from 5:30 p. m. to 6:30 a. m.

Although the law and this schedule provide for outdoor recreation for every inmate at least one hour a day, until a representative from the Municipal Court went up there there had been no attempt to carry this out. Many weeks passed without the women getting out at all even after the worker from Court was there. Although the ventilation is unusually good in the institution, and the outdoor surroundings are pleasant, and may be seen from the windows of the most of the work rooms, this means that for a period of from one month to two years the women may literally never breathe fresh outdoor air nor see a broad sweep of sky. Whether conscious of these deprivations or not, the women succumb to their depressing effect.

I made it a point to ask each woman what she disliked most about the place. With few exceptions they gave first the poor food and second the fact of being locked in their cells for thirteen hours daily. The second feature has been greatly modified. The food is more important and will be improved with greater difficulty. The usual diet is as follows: Breakfast, 6:45 a. m.; weak coffee, which most of the women say is not coffee, or tea and bread. Dinner at 11.45 a. m.; soup or stew and bread, except Friday, when they have fried fish, usually salt fish, and tea. Supper, 4:45 p. m.; tea and bread. It is customary for the women to be allowed to have as much tea as they want and they can have it between meals. The tea is boiled and very strong, and served in large tin cups that hold over a pint. Several of the women told me that they could never eat the meat in the stew, as it was offensive in odor. All spoke of the bread

as excellent. Fruit, fresh vegetables, milk and butter are unknown except to the women who work in the officers' kitchens.

I did not secure the menus from the officers, but depended upon the women's statements, and casual observation. This was because I did not wish to antagonize the authorities by appearing to intrude upon matters which to them would bear little upon examination of individuals. A thorough investigation, which should be made by the Department of Health, should include laboratory analysis and estimates of food values, and inspection of quality in a gross sense. The result of the excessive tea drinking and the great dependence upon starch is that the women almost without single exception stated that they suffered from chronic constipation, even though this was not their habit outside the institution. Others spoke of their difficulty in sleeping and attributed it to the tea. Much of this trouble may be in part due to the lack of exercise in the open air and of free body movements at work. It also is undoubtedly due to the low physiological tone of the women in general. But whatever the contributing causes, the single factor of a badly chosen and ill-balanced diet is the most important cause, and to effect a change even in those who are mainly suffering from chronic diseased conditions will require a thorough change in the quality of the food.

The matter of service of the food is next in importance to its quality. At present the women are better off than the men in that they eat in a dining room instead of in their cells. The dining room, however, has no direct ventilation from the outside, and the tables are crowded. Food is served most unappetizingly in tin plates and mugs. The importance of orderly and aesthetic table arrangements in educating and developing self-respect should not be overlooked. In the Sherborn Prison for Women in Massachusetts no effort is spared in making the table arrangements as pleasant as possible with tablecloths, and white china, and plants. The women are not allowed to talk at meals, but they are seated at tables accommodating about twelve, and a matron or one of their own members reads to them. The women almost uniformly respond to this. This would cost little more than the present arrangement at the House of Correction.

PHYSICAL AND MEDICAL CARE

When the superintendent or senior warden has interviewed the women for the docket information, they are sent to the dressing room, where a matron, assisted by inmate attendants, supervises their bathing and dressing in the institution clothes. There are two small basement rooms set aside for this. Several women undress and bathe at

the same time with no provision for privacy. The bath tubs are in one room without partitions. The tubs are black iron which was once painted white. Black tar soap is used, which yields almost no lather but stains the water black. The tubs are used several times without being cleansed, though the water is changed for each person. The floor in the bathroom is uneven and wet. Some, but not all, the women are given a shampoo. Women with verminous hair have it shaved off. Verminous clothes are burned unless a garment seems in fair repair, when it is soaked in the tar soap water, the tub in which someone has bathed or will bathe being used for the purpose. Any money the women have with them is handed over to the matrons, likewise any trinkets or other personal belongings. Occasionally a very clean woman is allowed to retain her underwear and very occasionally her corsets. The greater number, however, have all their own clothes taken from them and they are given heavy cotton garments alike in winter and summer. The institution stockings and shoes are put in a pile, and after the bath the women return to the room where they undress and select the shoe and stockings nearest in size to their needs. The women's own clothes are washed, without any special sterilization, but as hot water, sometimes boiled, and strong soap are used, this process is as cleansing as would be any formal sterilizing process. The outer garments are brushed and aired thoroughly and hung in a cold, well-lighted room on hooks that set a little closer together than is strictly sanitary.

After the women have put on the institution clothing they are sent up to be examined by the resident physician. This examination consists of asking a few routine questions and looking at the eyes, nose and mouth, and making a vaginal inspection, for the purpose of detecting the presence of acute contagious disorders. There is no general medical examination of heart, lungs, and bones, etc. and no bacteriological or blood testing work is done; there is likewise no attempt at treatment for eyes or teeth. If the women complain of poor eyesight they are allowed to select by a process of trial and error from the stock of glasses owned by the house until they find a pair that apparently gives them better vision. The women are not given toothbrushes, and very few have them.

HOSPITAL PROVISIONS

There are two classes of women cared for in the hospital, which is well lighted and a quite cheerful place; these are (1) the acutely ill, those suffering from delirium tremens and the effects of narcotic drugs, and (2) the women with little children. There are usually three

or four women who have babies or young children with them. The most serious feature about this is that the children share their mother's exile from all outdoors, and that there is no provision for their play, even indoors. The mothers act as hospital helpers and in some cases spend their entire time in the hospital, though when their children are past the nursing period they spend their nights in the regular cells.

The House of Correction is justly proud of its clean record in regard to epidemics, of which there has been none for at least 40 years. This freedom from epidemics is to be attributed to the cleanliness and good ventilation of the buildings, and to the fact that the inmates are past the age at which they would readily succumb to infection; also they are probably fairly well immunized to most contagious diseases. This does not mean that they are healthy or well, or in fit condition to do work of a high grade in any field.

Women with good records of work in the institution, such as cooks in the officers' kitchen, have told me that when they go out they are unable to keep positions requiring hard work or involving changes in temperature, such as general service on farms, because they become readily fatigued and chilled, owing to their low physical resistance.

It is probable that if special care were given to the personal hygiene of the women while in the institution, especially as regards eyes, teeth and diet, that they might be sent out in fairly good condition to look for positions and keep them. This is true certainly as regards those who are not mentally defective or abnormal. Adequate care even of a purely physical kind would require longer terms than are the rule at present.

WOMEN A SELECTED GROUP OF THE COMMUNITY

One of the prominent features about the women is that they represent a highly selected portion of the community. This is specially true in regard to the white women. In most cases where their stories were investigated it was found that the woman had been known to the police in the district for some time before the first arrest and that she was seldom committed by the magistrate until she had been arrested a number of times. There seems to be a distinct tendency on the part of the policemen to give women many more chances than they are likely to accord to men, and the magistrates show the same characteristic.

Another indication of the selected character of the women is the fact of their many re-commitments. They are to a high degree a self-perpetuating body. This point is treated in great detail later in the report.

In order to determine what relation existed between Correction women and women convicted of higher crime, I obtained permission from Captain Tate of the Detective Bureau to examine a large number of index cards selected at random from the files of this department. Detective Lindner spent several hours helping me in this. We selected cards of Philadelphia women and noted the crime of which each was accused and whether or not the woman had a House of Correction record against her. It was the plan to go over at least 200 cards, but when 178 cards were read and not a House of Correction commitment had been discovered, the search was abandoned. In the opinion of Captain Tate and Mr. Lindner, as well as of the matron and the superintendent at the House of Correction, there are few women committed there who have records of higher crime. It also appears that the Correction women are not drawn later into higher forms of crime. Of one hundred cases examined in detail only five had other court records against them, and of these but two charges were of essentially different nature from the charges which sent them to the House of Correction. The exact relation between the two classes of offenders might only be determined after years of recording of individuals by the Bertillon system.

TIME OF YEAR OF MOST COMMITMENTS

Part of the yearly report of the House of Correction consists of lists of figures showing the monthly number of commitments of the men and women. In the case of the men there is a remarkable uniformity in the increase during the winter months. The lowest number of commitments occurs in the three fall months, the highest in the winter, February being the heaviest, from which time the number steadily drops through the other seasons. In the case of the women no such curve is evident. The general tendency is for the number to remain nearly the same from month to month, showing only a slight tendency to increase during the spring and summer. As this difference between the two sets of figures is so marked they were subjected to further analysis with the following results:

During the four successive years 1911 through 1914 the number of men committed totaled 20,470 in the fall and winter months and 17,320 in the spring and summer. The figures for the women were 4,857 in the fall and winter and 5,065 in the spring and summer. In Table I (p.—) the average figures for each month of the year are given and the months ranked in a series of twelve, number 1 being the month in which there were the highest number of commitments of each sex. If the seasons are then graded according to the rankings by adding

the ranks together it will be seen that the seasons with the lowest total were the ones with the highest number of commitments. The significance of this may be seen in Figure 1, in which the figures are presented graphically.

There are evidently quite different causes operating in the seasonal commitment of men as compared with women. In the case of the men there are periods of unemployment due to seasonal shifts in occupations. Stress of winter weather probably makes many men seek saloons, where they get into trouble. Among the women there are apparent no such sociological and economic stresses. The difficulty is an internal one. Studies in the seasonal aspects^a of crime and violence, and of commitments to insane asylums, and of illegitimate conceptions indicate that all of these occur with the greatest frequency in the spring and summer months. The explanation seems to lie in the effect of weather changes upon the human nervous organism. The restlessness of which large numbers of normally constituted persons are conscious with the coming on of spring and the greater responsiveness to stimuli which is shown by the higher scores in all forms of athletic contests in warm weather, operate in the case of unbalanced persons and result in troublesome and anti-social acts. If this line of interpretation be correct, one would expect to find a large proportion of psychically abnormal cases among the women committed to the House of Correction, and such is the case; out of one hundred women examined with great care I was able to make an estimate of normality in only thirty-one. This is given detailed consideration in a later section of the report.

TABLE I.
AVERAGE NUMBER OF COMMITMENTS OF MEN AND WOMEN BY MONTHS FOR FOUR-YEAR PERIOD.

MONTHS	Men	Rank by Month	Rank by Season	Women	Rank by Month	Rank by Season
March	961	4	..	203	8	..
April	602	12	..	215	2	..
May	746	5	21	223	1	11
June	672	8	..	212	3	..
July	666	9	..	202	9	..
August	685	7	24	210	4	16
September	643	10	..	206	7	..
October	642	11	..	206	10	..
November	741	6	27	209	5	22
December	980	3	..	209	6	..
January	1,040	2	..	186	11	..
February	1,063	1	6	184	12	29

^aLeffingwell, *Illegitimacy and Influence of Seasons Upon Conduct*. London, 1892.

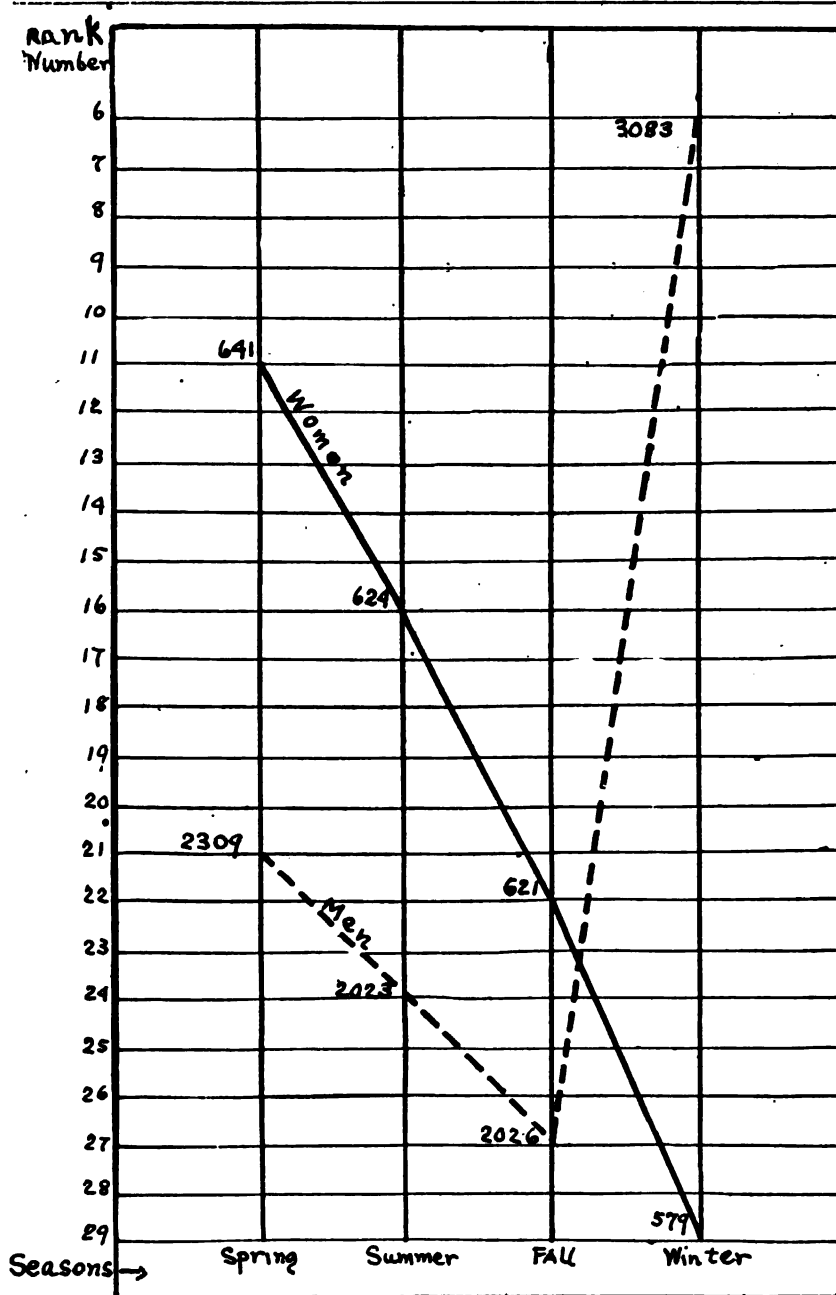


Figure 1. Variation in Number of Commitments According to Season and Sex. Solid line indicates number of women and broken line indicates number of men.

AGES OF THE WOMEN

In general the women are old. Of 300 cases the average age was 40 years, the median 41 and the most frequent age was 39. There were 162 over 40 and 138 under forty. In many institutions of the reformatory type, persons are not accepted if over thirty-five. If this rule were followed only 20 per cent would come in the group upon which reformatory influence might be expected to work.

As might be expected there is a distinct difference in the ages of women arrested for disorderly street walking and for other kinds of disorderly conduct, such as vagrancy, habitual drunkenness, etc. Of women accused of disorderly street walking, three-quarters are under thirty-five. Of women not so accused, only one in ten is under thirty-five.

RE-COMMITMENTS

Taking the year 1915 as the basis, of the 816 separate women involved in the 1,024 commitments, 59 per cent were re-commitments, and 35 per cent were serving their fourth or more than their fourth commitment. If we calculate the number of commitments that all women in the House during 1915 had served, we find that it totals 4,509. This is an average of 5.5 apiece. Among the three hundred women in the institution during the period of observation the average number of commitments was higher, amounting to 8.9 apiece. This difference is to be accounted for by the fact that it was during the winter when the number of women is smaller, and when the number of those serving their first commitment is lower, thus bringing up the average.

WHY THE LAW REGARDING LENGTH OF TERMS ACCORDING TO NUMBER OF COMMITMENTS IS NOT OBSERVED

The law in regard to length of terms is as follows: (Act of 1871, P. L. 1301, p. 27).

"First offenders must be committed for a term not less than three months nor more than one year; for the second time shall be committed for a term of not less than nine months nor more than eighteen months; for the third time for a term of not less than eighteen nor more than twenty-four, and for four times, or at any time thereafter, for a term of not more nor less than twenty-four months."

In tabulated form the law is as follows:

TIMES COMMITTED	Minimum Term in Months	Maximum Term in Months
One	3	12
Two	9	18
Three	18	24
Four and over.....	24	24

A most casual observation discloses the fact that this section of the law is a dead letter. Magistrates repeatedly commit persons for "thirty days," and there are records of ten-day commitments. For persons well known to magistrates, six months is considered a long sentence. In addition to the variable length of term there has been no consistent plan followed in regard to keeping the prisoners for the time specified, or providing for an indefinite commitment whose termination would depend upon good conduct. For persons committed without a detainer, a custom has grown up of taking off a proportionate number of days, amounting to approximately one week from a three-month's term, and two weeks from a six month's and a month from a year's term. For women doing machine work in the sewing room the inducement is held out that they will get "time off."

Because the section of the act providing for increasing length of sentences for recidivists is such a fundamental provision for making the institution correctional, it has seemed worth while to examine the facts in detail. Table II presents a comparison between the number of commitments and the length of the term in each case of 300 women. It will be seen that the average term length for all cases is three months. There seems to be a slight tendency to increase the length after the first commitment, so that the average length for the second through to the eleventh commitment, is four months, but this is not carried out after the eleventh commitment. No woman was committed to the maximum term of two years. Table 3 shows a comparison between the aggregate number of months called for by terms assigned, and the number of months that would fulfill the legal minimum requirement. Figure 2 shows the difference between these figures in graphic form. Summarized, the law regarding re-commitments is a dead letter, and is obeyed to only one-fifth of its extent.

TABLE II.
COMPARISON BETWEEN NUMBER OF COMMITMENTS AND LENGTH OF TERM
IN 300 CASES OF WOMEN.

COMMITMENT NUMBER	Total	TERM LENGTH						Total Term Length	Average Length of Term
		Thirty Days	Three Mos.	Six Mos.	Nine Mos.	Twelve Mos.	Eigh- teen Mos.		
Total.....	300	7	241	38	7	5	2	.....	.....
1.....	70	3	59	6	.....	2	.....	240	3 mos.
2.....	42	.....	29	10	3	.....	.....	174	4 "
3.....	27	.....	22	4	1	.....	.....	99	4 "
4.....	24	.....	18	4	.....	2	.....	84	4 "
5.....	13	.....	13	.....	.....	.....	.....	39	3 "
6.....	16	2	11	2	.....	1	.....	59	4 "
7.....	14	1	10	2	.....	.....	1	61	4 "
8.....	9	.....	7	2	.....	.....	.....	33	4 "
9.....	5	.....	4	.....	1	.....	.....	21	4 "
10.....	6	.....	5	1	.....	.....	.....	21	4 "
11.....	3	.....	2	1	.....	.....	.....	12	4 "
12.....	8	.....	7	1	.....	.....	.....	27	3 "
13.....	2	.....	2	.....	.....	.....	.....	6	3 "
14.....	2	.....	2	.....	.....	.....	.....	6	3 "
15.....	7	.....	7	.....	.....	.....	.....	21	3 "
16.....	7	.....	4	3	.....	.....	.....	30	4 "
17.....	4	.....	3	1	.....	.....	.....	15	4 "
18.....	5	.....	4	.....	.....	.....	1	30	6 "
19.....	1	.....	1	.....	.....	.....	.....	3	3 "
20.....	2	1	1	.....	.....	.....	.....	4	2 "
21.....	2	.....	2	.....	.....	.....	.....	6	3 "
22.....	3	.....	3	.....	.....	.....	.....	9	3 "
23.....	2	.....	2	.....	.....	.....	.....	6	3 "
24.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
25.....	1	.....	1	.....	.....	.....	.....	3	3 "
26.....	2	.....	2	.....	.....	.....	.....	6	3 "
27.....	2	.....	2	.....	.....	.....	.....	6	3 "
30.....	2	.....	2	.....	.....	.....	.....	6	3 "
32.....	1	.....	.....	.....	1	.....	.....	9	9 "
34.....	1	.....	1	.....	.....	.....	.....	3	3 "
35.....	1	.....	1	.....	.....	.....	.....	3	3 "
36.....	1	.....	1	.....	.....	.....	.....	3	3 "
40.....	2	.....	2	.....	.....	.....	.....	6	3 "
41.....	1	.....	.....	1	.....	.....	.....	6	6 "
42.....	1	.....	1	.....	.....	.....	.....	3	3 "
45.....	3	.....	3	.....	.....	.....	.....	9	3 "
46.....	2	.....	1	.....	1	.....	.....	12	6 "
50.....	1	.....	1	.....	.....	.....	.....	3	3 "
57.....	1	.....	1	.....	.....	.....	.....	3	3 "
62.....	1	.....	1	.....	.....	.....	.....	3	3 "
64.....	1	.....	1	.....	.....	.....	.....	3	3 "
65.....	1	.....	1	.....	.....	.....	.....	3	3 "
91.....	1	.....	1	.....	.....	.....	.....	3	3 "

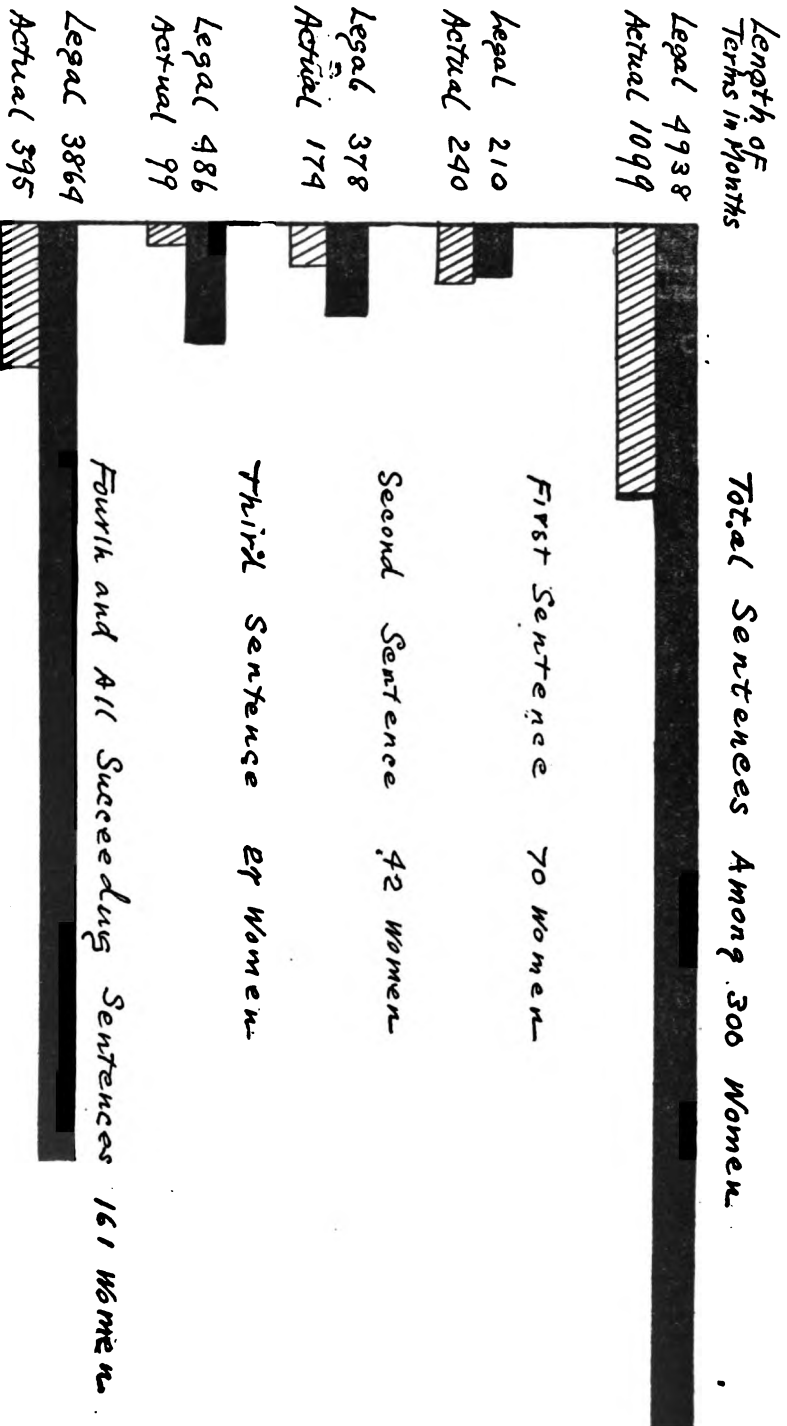


Figure 2. Comparison Between Length of Terms Imposed by Magistrates and Minimum Legal Length if Law of Increasing Length of Terms with Number of Sentences Were Observed. The length of the columns indicates the aggregate total of months; the black columns showing the legal months and the cross stripes the actual number of months in term imposed.

TABLE III.

AGGREGATE NUMBER OF MONTHS CALLED FOR IN TERMS OF 300 WOMEN COMPARED WITH LEGAL MINIMUM ACCORDING TO NUMBER OF COMMITMENTS.

NUMBER OF COMMITMENTS	Number of Women	Aggregate Months in Actual Terms	Legal Minimum Number of Months
Total	300	1,099	4,938
One	70	240	210
Two	42	174	378
Three	27	99	486
Four and over.....	161	586	3,864

If the customary sentences imposed upon persons accused of higher forms of crime be compared with the legal requirement in regard to the sentence imposed upon those guilty of what may in general be termed nuisances, it will be found that the latter far exceed the former in length and severity.

The failure upon the part of magistrates in Philadelphia to obey the law in this regard is in all likelihood due to their feeling that it is unjust to punish these relatively harmless persons more severely than so-called real criminals. House of correction and reformatory institutions generally are based upon a fundamentally different concept of the function of penal systems than that underlying the institutions for the punishment of crimes of a more serious nature. In the latter the idea is in the main to make it so unpleasant for the individual convicted of crime, that not only will he be deterred from repeating the offense, but that others may be restrained by force of his example from so doing. Another feature is that it is the crime not the person who is the center of attention. The concept of a prison as a place for the reformation or reconstruction of the individual prisoner is a relatively recent one and has had its origin in a widely separate group of facts and principles of government. This latter concept is the one upon which was organized the present House of Correction for Philadelphia, but it has apparently found little favor with the magistrates, who still adhere to the concept of a numerical ratio between isolated crimes and punishment for them; so much crime, so much pain inflicted.

Either the magistrates in general do not believe in the more modern penological concept or they have no faith that the present House of Correction is able to do any of the things which it says it exists for. In any case unless the terms are lengthened for the inmates even the most approved system of treatment within the institution will be powerless to carry out its designs.

WOMEN FORM A PRACTICALLY STABLE POPULATION IN THE INSTITUTION

From Table IV it may be seen that the women form a practically stable population, as 77 per cent of them return, and of these, 66 per cent return within a year of discharge.

TABLE IV.
COMPARISON BETWEEN TIME OUT AND RECOMMITMENTS IN 230 CASES.

TIME OUT	Number of Women	Number Out Less than One Year	Number Out More than One Year
Total	230	153	77
Less than one week.....	4	153	..
One week to one month.....	12	..	..
One to three months.....	30	..	..
Four to six months.....	60	..	..
Seven months to one year.....	47	..	..
One year to two years.....	39	..	77
Three to five years.....	26	..	..
Five years and over.....	12	..	..

ILLEGAL COMMITMENTS

It would appear from investigation that there are relatively few illegal commitments of women if they are considered from the point of view of justifiability. There is some question as to whether this applies to the colored women. (See later section of report). Many commitments are technically illegal in the charges assigned. For example the charge of "habitual drunkard" is supposed to apply only to those convicted more than once of drunkenness, whereas a considerable number of first commitments were found so designated. It is probable, however, that the woman had been brought before the same magistrate and discharged several times before commitment. One magistrate has sent people up on the charge of being a "worthless person." This term may have a psychological value in relieving the mind of the magistrate, but it hardly expresses a legal distinction. Among women put down as committed at their own request, at least two who were interviewed said they had applied to a local police station for aid in going to a hospital and had no idea that they would be sent to the House of Correction. These two were first commitments. The physical and mental examinations revealed the fact that in a large number of cases women were committed for "correction" who should have been sent to a hospital for chronic and sometimes acute mental and physical ailments.

CHARGES

For purposes of general comparison the women may be divided into two groups according to charge; the prostitutes and the non-prostitutes. The division is not strictly accurate because frequently a prostitute will be arrested on some other charge like that of disorderly conduct, or drunkenness, but in the main the two groups are distinct, and are so regarded by the officers of the institution. The non-prostitutes are almost without exception alcoholic, as it seems rare for a woman to be arrested for vagrancy or for being idle and disorderly unless she is known to be frequently drunk.

The prostitutes are in general the younger women, and they seem more able to keep out of the hands of the policemen than do the drunkards. Table V shows the relation between time out of the institution and the charge in 250 cases. It will be seen that more than half of the prostitutes were either serving their first terms or had been out for over a year, while only a third of the non-prostitutes were serving their first term or had been out of the House more than a year.

The actual charges among 300 women were distributed as follows:

Charge.	Number
Habitual drunkard	126
Vagrancy	71
Disorderly street walking.....	57
Vagrancy and idle and disorderly conduct.....	27
Idle and disorderly.....	16
Own request	3

TABLE V.

COMPARISON BETWEEN TIME OUT OF THE INSTITUTION AND CHARGE IN 250 CASES

CHARGE	Total	TIME OUT								First Com.
		Less than 1 Wk.	1 Wk.-1 Mo.	1-3 Mos.	4-6 Mos.	7-12 Mos.	1-2 Yrs.	2-3 Yrs.	5 Yrs. and Over	
Total.....	250	12	26	53	39	31	24	11	8	46
Prostitutes...	48	.....	3	7	10	5	8	1	3	11
Non-prostitutes.....	302	12	23	46	29	26	16	10	5	35

NATIVITY

In Table VI are given the details as to the nativity of 300 women. It will be seen that over one-half of all are native born Americans, the largest group being contributed by Philadelphia. Of the

non-Americans the English speaking countries contribute the larger share, leaving for all the non-English speaking nations only one in ten. This is quite out of proportion to the relative national make-up of our city population, which contains a far higher per cent of non-English speaking foreign-born people, and would indicate that recent immigration cannot be held responsible for this class of woman offender.

TABLE VI.
CHARGE AS COMPARED WITH NATIVITY.

CHARGE	Total	NATIVITY						
		Phila.	U. S.	Penna.	Irish	Eng- lish	Ger- man	All Others
Total.....	300	105	53	19	73	21	14	15
Percent.....	100	35	18	6	24	7	5	5
Disorderly street walker....	57	22	13	6	8	.....	3	5
Habitual drunkard.....	126	46	20	7	31	11	7	4
Vagrancy.....	71	21	9	2	25	10	2	2
Vagrancy, idle and disorderly.....	27	11	5	3	4	.....	1	3
Idle and disorderly.....	16	4	6	1	3	.....	1	1
Own request.....	3	1	.....	.....	2	.....	.....	.....

In the same table are given the details as to charge as compared with Nativity. It will be seen that the English born fall exclusively in the non-prostitute groups, and that the native-born Americans contribute a disproportionate number of prostitutes.

The docket information as to the occupations of the women is meager and not accurate, particularly as the term housework includes both those occupied in their own homes and in domestic service. It is significant, however, that the large majority of committed women are those occupied in the home, there being 255 registered for housework and other forms of domestic service, and only 45 in all other occupations.

RELIGION

The religious affiliations as given by the women are as follows: Roman Catholic, 199, or 66 per cent; Protestant, 96, or 32 per cent; Hebrew, 5, or 2 per cent. In several instances we found that women recorded as Roman Catholics were not so, but this number probably is not great enough to effect the total averages.

NUMBER OF CHILDREN

Docket information is obtained for the number of living children. These figures are far from accurate for a number of reasons. In the first place no question as to children is asked in cases reporting themselves as single women; this eliminates all illegitimate children. The women frequently do not understand the question and give the number of children they have had altogether or only those who are not yet of working age. Of 300 women 211 reported having no living children. The others reported from one to eight each, totaling 214 children for 89 mothers, or slightly over 2 apiece. Investigations disclosed the fact that practically all the women with children had been unable to care for them, and that their homes had been broken up some time before their commitments.

SPECIAL STUDY OF 118 WOMEN

METHOD OF EXAMINATION

Each woman was interviewed separately, the average time being over an hour for the first interview. In several cases I saw the woman many times. There was no effort to hurry or to cover a large number of questions. The object was to determine in a general way the woman's mental content and temperamental reactions, and to observe her physical condition. The women were told that I was to interview them for the purpose of following up any injustice to their commitment, and that I might be able to secure their parole. They also expected me to help them find work. When I first started to examine the rumor went abroad that I was to "examine their brains" and would commit them all to insane asylums. This rumor died down after a few examinations had been made, and in general the women liked to come up to my office, as it afforded a change from monotony. I encouraged them to talk freely, having it understood that anything they wished would be kept strictly confidential.

Records were kept in a certain regular order as indicated in Form A.⁴

FOLLOW-UP WORK

In a large number of cases follow-up work was done in the way of home visits and interviews with other agencies knowing the women or their families. This was for the purpose of verifying statements

⁴This is the order of recording followed by the authorities in the Sherborn Reformatory and Prison for Women, South Framingham, Mass., where remarkably careful individual studies are made of prisoners. The plan was originated by Mrs. Hodder, the Superintendent of the prison, and Miss Burleigh, State Supervisor of Parole for Girls in Massachusetts, and was presented at the International Congress on Prison Reform held at Paris.

and only incidentally for the purpose of social service, though the number of things to be done for the women in the way of securing charitable and medical care for their families and for themselves after discharge could have easily taken all my time.

Outline Used in Special Study of Women in House of Correction, 1916.

Form A.

- I. IDENTIFYING DATA.
 - Name. Age. Color. Date of birth. Place of birth. Religion. Register number.
- II. REASON FOR DESIRING PAROLE.
- III. DATA FROM COURT.
 - A. IMMEDIATE COURT HISTORY.
 1. Charge.
 2. Plea.
 3. Court.
 4. Judge.
 5. Date of commitment.
 6. Term of sentence.
 7. Expiration of sentence.
 - B. PREVIOUS COURT HISTORY.
- IV. DATA FROM INMATE.
 - A. FAMILY HISTORY.
 - B. PERSONAL HISTORY.
 1. Infancy.
 2. Childhood.
 3. Adolescence.
 4. Delinquencies.
 - a. First offense.
 - b. Arrest and sentence.
 - c. History of present commitment.
 5. Attitudes.
 - a. Toward the past.
 - b. Toward family.
 - c. Toward future rehabilitation.
- V. DATA FROM OFFICERS OF INSTITUTION.
 - A. REPORT OF RECEIVING MATRON.
 - B. REPORT OF PHYSICIAN.
 1. Medical.
 2. Mental.
 - C. INDUSTRIAL REPORT.
 - D. EDUCATION REPORT.
 - E. SOCIAL REPORT.
 - F. SUPERINTENDENT'S IMPRESSIONS.
- VI. DATA FROM OUTSIDE AGENCIES AND INDIVIDUALS.
 - A. FAMILY AND RELATIVES.
 1. Mother.
 - a. Heredity.
 - b. Pre-natal.
 - c. Birth and infancy.
 - d. Childhood.
 - e. Adolescence.
 - IMPRESSIONS OF MOTHERS.
 - CHARACTER OF HOME.
 2. Father.
 - IMPRESSIONS OF FATHER.
 - B. EMPLOYER.
 - C. PROBATION AND POLICE OFFICERS.
 - D. CLERGYMEN, SOCIAL WORKERS AND OTHERS INTERESTED.
- VII. PAROLE RESOURCES.

The negro and white women will be treated separately because of the generally superior character of the former.

AGES

Because of the large proportions of prostitutes, and of first timers among the group specially studied they were younger on the whole; those under 40 formed 57% instead of 33% as among the 300.

The charges were distributed as follows: Among 100 white women:

Disorderly street walkers.....	34
Habitual drunkards	44
Vagrants	16
Idle and disorderly persons.....	3
Own request	2
Habitual drunkard and cruelty and neglect.....	1

INVESTIGATIONS FOR PAROLE

In a few particularly urgent cases definite efforts were made to secure parole or to transfer the woman to the Philadelphia General Hospital. However, in 17 out of 29 specially followed the results of investigation was that no further effort was made to secure parole. In the 29 were included 6 disorderly street walkers, 14 habitual drunkards, 5 women accused of disorderly conduct, 2 of vagrancy, 1 being idle and disorderly, and one who was registered as committed at her own request. Most were first commitments. In several cases the actual facts bore so little resemblance to the woman's story that we were forced to the conclusion that she was suffering from a real delusion.

The general conclusion to be derived from this experience is that in a large majority of cases the women are where they belong; that is there are few unjustifiable commitments. This is somewhat different from the situation as regards the men. The problem as regards the women largely reduces itself to a question of the treatment accorded them in the institution and after their discharge.

SOCIAL BACKGROUND

As it appeared quite evident that the women represented a very definite section of the community special attention was given to their social relationship of all kinds. In every respect, they appeared as a maladjusted group, and this failure of adjustment seems due in greatest measure to inherent and constitutional defects in the woman rather than to any general and immediately controllable environmental features. This does not mean that the individual defects were not themselves conditioned by gross environmental factors, such as nutrition,

housing and education. It does mean, however that any attempt to deal with particular cases must proceed along the line of providing a suitable environment for definitely pathological types, rather than with the expectation of modifying the individuals in such a way as to make them normal members of the normal social group.

OCCUPATIONS

In Table VII are given the details as to the occupations of 100 women as compared with charges. It will be seen that the largest number, 22, are drawn from those occupied in their own homes, and that if with these are included the 40 engaged in various types of domestic service, three-fifths of all are house workers. Of the remaining two-fifths, 14 acknowledged that they had no regular occupation. It is probable that many of those giving housework as their employment really had no employment, as the great majority lived in furnished rooms.

TABLE VII.
OCCUPATION OF WOMEN COMPARED WITH CHARGE.

OCCUPATION	Total	Disorderly Street Walker	All Other Charges
Total	100	34	66
Housework	22	8	14
None at all.....	14	5	9
Day's work	12	5	7
Factory	11	6	5
At service, living in.....	7	..	7
Laundress	7	2	5
At service, living out.....	6	1	5
Waitress in hotel, etc.....	4	3	1
Chambermaid	3	2	1
Saleswoman	3	1	2
Cashier	2	..	2
Agent	2	..	2
Factory home work.....	2	1	1
Housekeeper	1	..	1
Typewriter	1	..	1
Bookkeeper	1	..	1
Dressmaker	1	..	1
Bookbinder	1	..	1

CIVIL CONDITION

In Table 8 are given the details as to the civil conditions of 100 women. It will be noted that the large majority, 80, had been married and of them 21 were widows and that very few of the remainder were living normal married lives. In all the cases where a

legal divorce was reported, it was the man who secured it. Of the 21 widows, 20 were alcoholics. In a number of cases they reported that they had begun to drink with their husbands and that discouragement and loneliness had made them continue lately.

TABLE VIII.
CIVIL CONDITION OF 100 WOMEN COMPARED WITH CHARGE.

CIVIL CONDITION	Total	Disorderly Street Walker	All Other Offenses
Total	100	34	66
Widowed	21	2	19
Separated	21	12	9
Single	19	6	13
Married	19	5	14
Deserted	6	2	4
Common law	5	2	3
Divorced	3	1	2
Wife deserted husband.....	3	2	1
Paramour after desertion.....	3	2	1

CHILDREN

In Tables 9 and 10 are given the details as to the number of children born to 100 women, and the number surviving. The street walkers are seen to be not so fertile as the other women, a fact which is probably directly due to their manner of living, which leads to diseases resulting in sterility. Of 195 children, only 109 survived. The large majority of these children are charges either upon private or public charity, and only 13 women reported living with their children.

TABLE IX.
NUMBER OF CHILDREN BORN TO 100 WOMEN.

NUMBER REPORTING			Disorderly Street Walker		All Other Offenses	
	Total Women	Total Children	Women	Children	Women	Children
Total	100	195	34	33	66	162
None.....	38	.....	19	.....	19	.....
One.....	17	17	5	5	12	12
Two.....	10	20	5	10	5	10
Three.....	7	21	2	6	5	15
Four.....	7	28	1	4	6	24
Five.....	4	20	.....	.....	4	20
Six.....	3	18	.....	.....	3	18
Seven.....	4	28	1	7	3	21
Eight.....	2	16	.....	.....	2	16
Nine or more.....	3	27	1	1	2	26 plus
Unknown.....	5	.....	.....	.....	5	.....

TABLE X.
NUMBER OF LIVING CHILDREN AMONG 100 WOMEN.

NUMBER OF CHILDREN	Women	Children
Total	100	109
None	51	..
One	16	16
Two	11	22
Three	9	27
Four	2	8
Five	3	15
Six	1	6
Seven	1	7
Eight	1	8
Nine and over.....	..	..
Unknown	5	..

Information as to the number of illegitimate children was secured in 93 cases. Of these 10 reported having had one, and two had had two illegitimate children, making a total of 14, which is doubtless far below the actual number.

As an index to the general physical condition of the women, information was asked as to the number of miscarriages and still births, the results of which were as follows:

	Number of Women	Number of Miscarriages
Reporting no miscarriage.....	70	..
Reporting 1 miscarriage.....	10	10
Reporting 2 miscarriages.....	18	36
Reporting 3 miscarriages.....	3	9
Reporting 4 miscarriages.....	4	16
Reporting 8 miscarriages.....	8	64
Total	43	135
		Number of Stillbirths
Reporting 1 stillbirth.....	6	6
Reporting 2 stillbirths.....	2	4
Reporting 3 stillbirths.....	3	9
Total	11	19

These numbers are in excess of the normal number of miscarriages and stillbirths in the population at large, and indicate a low physiological tone on the part of these women.

Another evidence of the lack of ability on the part of the women to maintain a normal manner of home life is shown by the fact that 73 reported living in furnished rooms. This means almost inevitably the

breaking up of all home ties with people of the social and economic grade under consideration. The fact that they do not own their furniture, and can move at a day's notice, means that a very real factor making for stability in personal and working life is removed. Of the remaining 27, 17 reported living in a rented house, 9 were at service or in hotels, and one owned the house.

KNOWN TO CHARITABLE AGENCIES

With this large amount of broken up family life it was not surprising to find that of 52 cases specially investigated, 37 were known to charitable agencies of various kinds, some of them being known to as many as ten separate agencies. The Society for Organizing Charity and the Society to Protect Children from Cruelty were the most usual ones. The cases not so known were originally single women without children.

INSTITUTION RECORD

Many of the women had been in other corrective or outside institutions. One woman who had served five terms in the House of Correction had also served four terms in the House of Good Shepherd. Her husband had kept her alternating between the two places for eleven years. In between her commitments she bore five of her seven children, and had four miscarriages. The majority of the alcoholics had been in the Philadelphia General Hospital at one time or another. Of the 32 women who admitted having been in other institutions, 19 had been in the House of Good Shepherd; 9 in the County Prison, including 2 who had also been in the House of Good Shepherd; 3 had been in the Salvation Army Home, and one in a private sanatorium for the insane, one in the Magdalen Home, and one in the Sherborn Prison, Massachusetts.

OBSERVATIONS AS TO THE PHYSICAL CONDITION OF 100 WOMEN

The appearance of the women as a whole is that of a poorly nourished, undersized group. The fact that they are old, and that they wear no corsets makes them appear shorter than they really are. Each woman is weighed and measured upon entrance by an inmate attendant. The work is carelessly done and the results are not accurate, especially as the measurements are taken with clothes on, including outer garments. However the measurements confirm the general appearance. The average weight of 300 women was 127 pounds, and the average height slightly over 5 feet 3 inches. The vast majority, 240, are under 5 feet 6 inches. The average figures are not so

significant as the actual proportions, which seldom showed a proper balance between height and weight.

PHYSICAL DEFECTS AND SYMPTOMS OF DISEASE

Observations as to the physical condition of each woman were made under twelve heads. There was first a general estimate made of their nutrition, as shown by growth, color and texture of the skin, especially of the mucous membranes about the mouth and eyes, carriage and tenacity of muscles, and the condition of the hair. In fifty-three cases out of the hundred this was noted as poor. Where an acute condition of mal-nutrition was evidenced by extreme emaciation, pallor and by other skin signs, this was noted as a distinct defect, and occurred in thirty-three cases. The nutritional condition is extremely important because of the close relationship between mental and nervous balance and the general bodily metabolism. Energy for thought and the making of decisions affecting conduct and the appreciation of social values is derived from the residue after mere physical life is supported. If the store is low, the margin that should go toward supporting conscious life is used up.

Other conditions noted were the presence or absence of symptoms that would indicate a need for further examinations of the following sorts: General medical, for diseases of heart, lungs, and the alimentary tract and skeleton; gynecological; for suspected drug using; for venereal diseases; for special nervous disorders; for skin diseases; and for defects of the eyes, ears and teeth.

In Table XI are given the results of these observations. The statements are not in the nature of diagnosis, but express merely what the examiner thought was necessary in order to form the basis for complete individual diagnosis and treatment. The defects are listed in their numerical order, and are further sub-divided according to the charge against the women. In the case of drugs, there were 14 street walkers about whom there was definite information that they were drug users, and 4 women accused of other offenses who were also known to be drug users. In the case of venereal diseases, there were 4 women in each group known to have had either syphilis or gonorrhea. Thorough medical examinations of all the women would doubtless disclose many more defects particularly of the last two sorts.

The figures in Table XI do not show how many defects there were per person, but there were obviously more than one, the average being nearly five. Some women presented many defects, and there were a very few who might be called fairly healthy. It is noticeable that there is some relation between the defects and the nature of the

charges. If the defects were similarly distributed there would be a constant ratio of about 1 to 2, which is the numerical ratio between the two groups as a whole. It will be seen that the street walkers have nearly six defects apiece and show a disproportionate number of defects associated with nutrition, venereal diseases, suspected drug using, gynecological trouble and suspected tuberculosis, while the other women show a high number of eye defects and nervous diseases.

TABLE XI.
PHYSICAL CONDITION COMPARED WITH CHARGE IN 100 CASES.

EXAMINATION NEEDED FOR	Total	Disorderly Street Walker	All Other Charges
Total women	100	34	66
Total defects	474	198	276
General medical	78	26	52
Teeth	74	25	49
Nervous disorder	54	20	34
Poor nutrition	53	20	33
Eyes	45	14	31
Venereal disease	43	27	16
Drug using	37	25	12
Gynecological	36	16	20
Acute malnutrition	23	13	10
Tuberculosis	21	9	12
Skin disease	6	2	4
Defective hearing	4	1	3

MENTAL CONDITION OF WOMEN SPECIALLY EXAMINED

"Even to a lay mind, it is manifest, on a cursory view, that many of the inmates are either insane or feeble-minded." This was the statement made by Dr. Hastings H. Hart and Mr. Leonard in their report on the Bureau of Correction in 1915. This impression was more than confirmed by a closer examination of individuals. The main object of the interviews with the women was to arrive at a fair estimate of their mentality. No attempt was made to make a close diagnosis. The object was rather to make a general classification which should, as in the estimates of the physical conditions, serve as a basis for a more detailed examination and ultimate disposition of each case.

The final test of mental competency is a social one. Judges and juries are rightly conservative in the matter of declaring persons fit subjects for permanent custodial care unless they are quite incapable of the ordinary social adjustments. The standard, therefore, adopted in the making of these classifications was the practical one of considering

how any given case would appear in the eyes of a judge or a jury concerned, not with highly specialized psychological distinctions, but with quite obvious social values.

Two-Fold Classification

Each woman was classified in two ways, first as to her place in scale measuring mental content, whereby she was adjudged either of average or more than average intelligence, dull or very dull, or of subnormal intelligence. This is a scale indicating mental levels and is essentially quantitative. The second classification was according to the presence or absence of mental abnormalities considered from a qualitative point of view. On the mental level side of the classification "above normal" is taken to mean above the normal for the group under consideration. Some of these so marked, were above the average for the general population. These classed as "subnormal" were those of either defective mentality of congenital origin or of such marked deterioration that their mental level was subnormal at the time, however it may have been earlier in life.

An essential feature of this classification is that it is descriptive rather than analytical and was based upon combinations of symptoms actually found to exist rather than constructed a priori. In Table XII is shown each person's place in the two groups. The meaning of the terms used is as follows:

1. *Alcoholic Psychosis*.—Mental instability or deterioration apparently resulting from excessive use of alcohol. The symptoms of this condition, which range from simple confusion of mind to distinct delusions and hallucinations of vision and hearing, may be present either periodically or immediately after indulgence, or they may persist long after.

2. *Insanity and Borderland Insanity*.—By this is meant a condition of permanent mental derangement which may have preceded alcoholism, and of which alcoholism was the result rather than the cause, or it may have developed after prolonged alcoholism. To be placed in this category the woman would have to show defective orientation for time or place or persons, or of delusions and obsessions, or complete incoherence or mania. Among these was one woman 78 years of age suffering from senile dementia of an acute form.

3. *Psychopathic Personality*.—This is the term used commonly by alienists and psychologists to designate persons with unstable and defective volition, who are neither feeble-minded or insane. These persons may possess a high degree of native intelligence and ability

and they are capable of forming moral judgments, and may be productive members of society provided they are not called upon to make personal adjustments with other individuals. They yield too readily to impulses to gratify immediate desires, being incapable of holding an idea against a present suggestion, whether this be to show off, or get drunk, or experiment with drugs, or to get angry, and so forth. This instability of emotion and weak will are psychic defects, but they are not mental defects as the term is ordinarily used. They concern that part of the mentality which has to do with social relationships and with conduct. The psychopaths are probably the most important group met with in criminology, as they generally outnumber the feeble-minded with whom they are frequently confused. Many of these suffering with distinct alcoholic psychoses are at base probably of psychopathic personality.

4. *Delinquency Mentality*.—This term indicates a group of persons commonly recognized among recidivists who seem to be persistently anti-social in their inclinations and conduct in spite of apparent ability, understanding and strong will. To quote Dr. Anderson of the Boston Municipal Court:⁵

"They are not impulsive, poorly balanced, neurotic individuals; they are not lacking in inhibition and liable to great emotional extremes, violent outbursts of temper, etc., as are the psychopaths, who are often quite conscientious and sincere and try repeatedly to do better, but fail because of their marked nervous and mental instability. On the contrary this particular type . . . are fairly intelligent. . . . They have a stable mentality, are cool and calculating, deliberate, planning out situations in advance, indolent and superficial, very selfish, egotistic, heartless and even cruel at times. In them the self-preservation instincts are undisciplined and the nobler sentiments are lacking. They are strongly individualistic.

"In short, they possess a mentality that differs from the average or normal in that it is particularly non-social . . . their mental condition is to be explained purely on psychological rather than on pathological grounds, is acquired rather than innate. . . . These individuals have not had at the proper stage of their development those socializing influences that discipline the instincts and emotions."

As will be seen from Table XIII this was not a type frequently found in the House of Correction. Five of the seven women so marked were unusual in that they had criminal records outside, and they were in no way typical of the house population generally. Each one had had unusual schooling and other advantages in the way of good family and freedom from extreme economic pressure.

⁵Anderson, Victor V., in *Borderline Mental Cases*. This JOURNAL, Vol. VI, No. 5, pp. 689-695.

5. *Doubtful* cases are those presenting symptoms, which may, on closer examination, be indicative either of fundamental defectiveness or feeble-mindedness, or of the deterioration of insanity.

6. *Borderline Feeble-Minded* are those who are probably feeble-minded, but who would require a more careful examination to determine their exact status.

7. *The Feeble-Minded* individuals were obviously imbeciles.

TABLE XII.

MENTAL CLASSIFICATION OF 100 WOMEN ACCORDING TO LEVEL, OF INTELLIGENCE AND ABNORMAL MENTAL STATE.

ABNORMALITIES	Total	LEVELS				
		Above Normal	Normal	Dull	Very Dull	Sub-normal
Total	100	17	30	13	7	33
None present.....	31	8	17	2	4	..
Alcoholic psychosis..	19	2	6	3	2	6
Borderline insanity..	12	1	2	1	..	8
Psychopathic personality	11	2	3	5	1	..
Delinquent mentality..	7	3	2	2	..	..
Insanity	7	1	..	..	..	6
Doubtful	6	..	..	..	..	6
Borderline feeble-minded	4	..	..	..	..	4
Feeble-minded	2	..	..	..	..	2
Epileptic	1	..	..	..	..	1

Mentality and Charges

If the two groups of women divided according to charge are compared as to their mentality, certain differences appear, as shown in Table 13 and Table 14. The general ratio between the figures should be in each line as 1:2, comparing street walkers with other offenders. This ratio holds fairly well except in the group marked above average where it is 7:10, and in the dull where it is 8:6 and in the subnormal where it is 12:21. The street walkers are apparently more variable, being both above and below the average level of mentality with greater frequency than the others. As regards mental abnormalities, the street walkers contribute more than their share to the groups of psychopathic personalities and delinquent mentality. They furnish less than their quota of those free from mental abnormality.

Relation of Mentality to Re-Commitments

In Tables 15 and 16 are given the results of comparing the number of commitments of each woman with her mental condition considered, both according to level and deviation. It will be noted that the first timers fall largely in the normal groups in both cases, so that out of 28 first timers, 71 per cent were of normal mental level, and 60 per cent presented no mental abnormality. Of those below mental level, three-fourths were repeaters, and of 69 presenting mental abnormalities, 52, or 75 per cent were repeaters.

TABLE XIII.

MENTAL LEVEL AS RELATED TO CHARGE AMONG 100 WOMEN.

CHARGE	Total	LEVELS				
		Above Normal	Normal	Dull	Very Dull	normal Sub-
Total	100	17	30	13	7	33
Disorderly street walker	34	7	5	8	2	12
Habitual drunkard...	44	7	18	2	3	14
Vagrant	16	3	4	2	1	6
Idle and disorderly..	3	..	1	1	1	..
Own request	2	..	2	..	..	..
Habitual drunkard and cruelty and neglect.	1	..	..	..	..	1

TABLE XIV.

CHARGE AS RELATED TO ABNORMAL MENTALITY.

MENTAL ABNORMALITY	Total	Disorderly Street Walker	Hab'l Drunk.	Vagrant	Idle and Disorderly	Own Request	Hab'l Drunk. and Cruelty
Total.....	100	34	44	16	3	2	1
None present.....	31	8	16	5	1	1	.....
Alcoholic Psychosis.....	19	3	11	2	2	.....	1
Borderline Insanity.....	12	4	5	2	.....	1	.....
Psychopathic personality.....	11	5	3	3	.....	.....	.....
Delinquent mentality.....	7	7	.....	.....	.....	.....	.....
Insanity.....	7	2	4	1	.....	.....	.....
Doubtful.....	6	2	2	2	.....	.....	.....
Feeble-minded.....	4	2	2	.....	.....	.....	.....
Borderline feeble-minded.....	2	1	.....	1	.....	.....	.....
Epileptic.....	1	.....	1	.....	.....	.....	.....

TABLE XV.
RELATION BETWEEN MENTAL LEVEL AND NUMBER OF COMMITMENTS.

NUMBER OF COMMITMENTS	Total	LEVELS				
		Above Average	Average	Dull	Very Dull	Sub-normal
Total	100	17	30	13	7	33
1	28	4	11	3	2	8
2	16	3	6	4	1	2
3	9	2	2	2	1	2
4	5	2	2	..	..	1
5	8	2	2	2	..	2
6	6	..	2	..	1	3
7	3	1	..	..	1	1
8	1	..	..	..	..	1
9	1	..	1	..	..	..
10	1	..	..	1	..	..
11	2	1	..	1	..	..
12	2	..	..	..	..	2
14	1	..	..	..	..	1
15	1	..	..	..	..	1
16	3	1	1	..	1	..
18	1	..	..	..	..	1
20	2	..	1	..	..	1
21 and over.....	10	1	2	..	..	7

TABLE XVI.
RELATION BETWEEN NUMBER OF COMMITMENTS AND MENTAL ABNORMALITIES IN 100 WOMEN.

MENTAL ABNORMALITIES	Total	NUMBER OF COMMITMENTS										
		1	2	3	4	5	6	7	8	9	10	11-21
Total.....	100	28	16	9	5	8	6	3	1	1	1	22
None present.....	31	11	6	3	..	..	4	1	..	1	..	5
Alcoholic psychosis.....	19	3	2	4	1	2	..	1	..	..	..	6
Borderline insanity.....	12	3	2	1	2	2	..	..	..	..	..	2
Psychopathic personalities.....	11	3	2	1	1	2	..	..	..	..	..	2
Delinquent mentality.....	7	2	2	1	1	..	..	..	..	..	1	..
Insanity.....	7	2	..	..	..	1	2	..	1	..	..	1
Doubtful.....	6	2	1	..	..	..	..	..	..	..	..	3
Borderline feeble-minded.....	4	1	..	..	..	1	..	1	..	..	..	1
Feeble-minded.....	2	1	..	..	..	..	..	..	..	..	..	1
Epileptic.....	1	..	..	..	..	..	..	..	..	..	..	1

SCHOOLING

In this connection it is interesting to observe a direct relation between schooling and number of commitments. The results are given

in Table 17. A rather surprising number reported no schooling. This is probably related to the advanced age of many, who were young in the days before compulsory education was general, and also in the fact that many come from countries where there is little free public education. Of the 25 women with no schooling, 21 were repeaters. Of the 44 who had gone beyond the fourth grade in school, 18 were first timers. Of the 44 who had not gone beyond the fourth grade, only nine were first timers.

Considering the mental condition of the women as shown by the amount of schooling they had and by the results of observation of their present state, there seems to be clear evidence that there is a distinct relationship between mentality and their liability to get into the kind of trouble that will bring them to the House of Correction.

TABLE XVII.

RELATION BETWEEN SCHOOLING AND NUMBER OF COMMITMENTS.

NUMBER OF COMMITMENTS	Total	SCHOOLING											
		None	1	2	3	4	5	6	7	8	High School	Special Training	No Information
Total.....	100	26	1	3	5	9	5	5	5	23	5	1	12(a)
1.....	28	5	...	...	2	1	3	3	2	9	2	.....	1
2.....	16	5	...	...	...	2	2	...	2	3	1	1	.....
3.....	9	3	...	...	1	1	...	1	...	3	.....	.....	.....
4.....	5	...	...	1	...	...	...	...	1	1	1	.....	1
5.....	8	1	...	...	...	3	...	...	...	2	1	.....	1
6.....	6	3	1	...	...	...	...	1	...	...	.....	.....	1
7.....	3	1	...	...	...	...	...	...	...	1	.....	.....	1
8.....	1	...	...	...	...	...	...	...	1	...	.....	.....	.....
9.....	1	1	...	...	...	...	...	...	...	...	.....	.....	.....
10.....	1	...	...	...	...	1	...	...	...	...	.....	.....	.....
11-91.....	22	7	...	2	2	1	...	...	...	3	.....	.....	7

(a)—Of these cases seven were so rambling and incoherent in their remarks that exact information was not to be secured.

COMPARISON BETWEEN WHITE AND COLORED WOMEN

In the first entertainment given by the women themselves, after the introduction of evening entertainments by the special worker from the Municipal Court, one of the outstanding features was the evident superiority of the colored women in their ability to plan and execute a varied program and in the quality of leadership. It is a matter of common comment among the matrons that the negro women are, on the whole, of a higher class than the white women, and that this is

shown by their greater docility, obedience and working capacity. A study of the docket information, especially in regard to number of commitments, shows this, and the fact was again emphasized when individual examinations were made. In Table XVIII are given the distribution of charges according to color. It will be seen that the proportion of street walkers is relatively high among the colored, while there are relatively few habitual drunkards.

The following is a summary of the findings in regard to sixteen colored women studied. There were not enough cases to warrant a correlation of the details as in the case of the white women:

Known to Other Agencies.

Of six registered with bureau for the registration and exchange of confidential information, none was known to other agencies.

Institution Record.

Five had been in county prison on similar charges.

General Home Conditions.

Living at home with husband and children	5
With husband, children with relatives.....	1
Home broken, children with relatives.....	1
Unmarried, no children	7
Home broken, no children.....	2

Habitation.

Furnished room	10
Rented house	3
At service	3

Living With.

Strangers	5
Husband	6
Relatives	2
Promiscuously	2
Parents	1

Schooling.

Second grade	1
Third grade	3
Fifth grade	4
Sixth grade	2
Eight grade	2
High School	1
Special training (dressmaking).....	2
None	1

Religious Affiliation.

Protestant	13
Roman Catholic	3

Literacy.

Illiterate	2
Literate	14

Alcoholic Habits.

Alcoholic	3
Abstainer or temperate	13

Children.

Total number born	9
Total living	7
Total illegitimate	6

Nativity.

States outside Pennsylvania.....	9
Philadelphia	3
Pennsylvania	3
Philippines	1

Occupations.

Housework at home	3
None	3
Day's work	3
Living in at service.....	1
Living out at service.....	3
Laundress	1
Waitress in hotel	1
Washwoman	1

Number of Commitments.

One	9
Two	4
Four	2
Seven	1
Weighted average No.....	2

Charges.

Disorderly street walker.....	9
Idle and disorderly.....	7

Mental Level.

Above average	3
Average	6
Dull	4
Subnormal	3

Mental Abnormalities.

None present	12
Feeble-minded	2
Borderline feeble-minded	1
Psychopathic personality	1

Physical Condition.

General poor nutrition.....	8
Acute malnutrition (included in above).....	6
Suspected drug users.....	4
Suspected venereal disease.....	10
Needing general medical examination.....	12
Needing gynecological examination.....	5
Needing nervous examination.....	4
Suspected tuberculosis	6
Eye defects	6
Defective teeth	8

TABLE XVIII.

CHARGE AS COMPARED WITH COLOR IN 300 CASES.

CHARGES	Total	COLOR AND PER CENT			
		White		Colored	
		No.	Per Cent	No.	Per Cent
Total	300	270	100	30	100
Habitual drunkard.....	126	122	45	4	13
Vagrancy	71	65	24	6	20
Disorderly street walker.	57	49	18	8	27
Vagrancy and idle and disorderly	27	23	9	4	13
Own request	3	3	1	..	..
Idle and disorderly.....	16	8	3	8	27

The totals, however, show a striking contrast in nearly all respects between colored and white. As regards mental level, only 3 were subnormal, and a large proportion were average and above average. The twelve presenting no mental abnormalities are in striking contrast to the meager 31 per cent of white women. The general physical condition was better. Schooling had apparently been better. Only three reported entirely broken up family life, as compared with the two-thirds of the white women reporting this condition.

Of all the differences the relative number of commitments is most significant. Among the thirty colored women in the House of Correction during the period of observation, 43 per cent were first-timers, as compared with only 21 per cent of the white. The average number of commitments per person was slightly over 2, as compared with 9 among the whites. There were no cases of negroes who had several unusually large numbers of terms, while among the whites, twelve per cent had served twenty-one terms or more. Of the 16 specially studied it was noticeable that those serving the largest number of

commitments were the mentally abnormal; so that of the two feeble-minded women, one was serving the fourth and one the seventh, and the one with psychopathic personality was serving her fourth.

Apparently the colored women are not a highly selected group of the population as are the white women. The reason for this seems to be that policemen and magistrates do not feel the same chivalrous disinclination to arrest and commit colored women that they display in regard to white women. The relatively small number of recommitments is to be further accounted for by the fact that the colored women respond more readily to the discipline of the institution because of their greater docility. Investigations showed that in a number of cases the woman bore a good reputation in her neighborhood with her local police, and had been committed at the time of her first arrest.

SUMMARY AND CONCLUSIONS

1. This study covers a period of three months and involves 300 women.
2. Information on 300 women was gathered under seventeen heads, and detailed examinations were made of 118 women, resulting in information under thirty-eight heads. In addition, the figures relating to recommitments were analyzed in 816 cases.
3. The general provision for physical care of the women, while it fails to measure up to modern requirements, would probably compare favorably with similar institutions of equal age. The most serious deficiency in the general physical provision is in regard to the food, which is of poor quality, ill-balanced and wretchedly served.
4. There is little provision for individual care, and no assurance that the women will be in any fundamentally better condition upon leaving than they were on entrance, except that some improvement is inevitable as a result of quiet and regular hours.
5. The women represent a highly selected group in the community. This is shown by their small numbers as compared with the men; the fact that they are not committed as readily as the men, and that they serve a large number of terms, averaging during the entire year over five commitments apiece and during the winter months nine apiece. There is apparently little relation between the class of offenders committed to the House of Correction and women convicted of so-called higher crime. The women apparently strike their level, a low one, rather early in life and remain there.
6. Study of the time of year during which most women are committed shows that there are different causes operating in their case

from that of the men. Apparently the men are largely influenced by external conditions, such as economic and weather stresses, while the women are committed because of internal factors making for personal maladjustment. Examinations of individuals confirmed this.

7. Of 300 women, 162 were over 40. Women under 35 are nearly all those charged with disorderly street walking.

8. The law in regard to increasing terms with successive recommitments is a dead letter. Comparison showed that the legal minimum length of sentences was five times as great as the length of sentences actually being served.

9. Magistrates fail to obey the law in regard to increasing the length of sentences, either because they do not agree with the concept of justice, which this represents, or because they do not consider that the House of Correction, as it is at present equipped and organized, can do the work of reconstructing individuals for which it was designed. Probably both of these factors are operative.

10. Investigations showed few illegal commitments of women, except in the single respect of length of term. The women are apparently committed justly in nearly all cases.

11. Although there are found technically five charges upon which women are committed, habitual drunkenness, vagrancy, idle and disorderly conduct, own request and disorderly street walking, these may be reduced practically to two groups, the street walkers and the alcoholics, as it seldom happens that a perfectly sober woman of known temperate habits gets into trouble with the police. This is apparently a different condition than is found in the case of the men.

12. The street walkers are better able to keep out of the House of Correction than the alcoholics, as shown by the fact that the time between recommitments is shorter in the case of the latter.

13. A study of the nativity of the women shows that 59 per cent are native-born Americans, and the largest number are Philadelphians by birth. The next largest group come from English-speaking nationalities, while only a tenth are non-English speaking. This would indicate that immigration and the inability to speak English cannot be held responsible for the problem of the drunk and disorderly women in the city.

14. A study of the occupations of the women shows that work outside the home is not responsible for their getting into trouble. It is questionable whether there is any relation whatever between occupation and these classes of offenses. Probably women capable of following regular wage-earning occupations are also capable of taking

care of themselves, and this would account for the extremely low number of skilled occupations represented.

15. The greater number of women had been married, and had 214 living children.

16. Examinations of 118 women were made in detail, including 102 white women and 16 colored. The information was tabulated in the case of 100 white and 16 colored women. These women are fairly representative of the entire group, differing only in the relatively large number of street walkers and first timers.

17. Part of the object of the examination was to determine the proportion unjustly committed or eligible for parole. Among 29 cases specially investigated, 17 were dismissed from consideration for parole. Transference to the Philadelphia Hospital was asked for in 6 cases and secured in 4. Parole was asked for and secured in 5 cases.

18. Study of the social background of the women revealed the fact that they were socially incompetent and unable satisfactorily to meet the obligations and responsibilities of life outside. The most striking evidence of this was the fact that nearly all had not even the material basis for normal home life, which is a permanent habitation, but lived casually about in furnished rooms. Although they had nearly all been married and had borne on an average of two children apiece, their families were scattered and the children in the care of institutions or relatives, and this condition in most cases far antedated their commitments. The large majority of the women were known to charitable agencies, and a considerable proportion had been in other institutions of a correctional or custodial character. These facts indicate the need for comprehensive community planning and care for these women, if for nothing other than financial reasons.

19. Examination of a most superficial sort revealed the presence of symptoms of a large number of acute and chronic physical ailments, there being an average of nearly five defects for each woman. Need for general medical examination of heart, lungs and alimentary canal was the most apparent, and next in order came defective teeth, poor nutrition and bad eyes.

20. Observations as to the mental condition of 100 white women resulted in the conclusion that only 31 were not mentally abnormal in some way or other. A twofold classification, involving both quantitative and qualitative standards, shows that 33 were below the normal level of intelligence, because of congenital feeble-mindedness or deterioration from acquired mental disorders, while 69 presented signs of distinctly abnormal mental conditions.

21. Comparison between the charges against the women and their mental condition showed that the street walkers were, on the whole, of a better grade mentally than the alcoholics. This may be partly explained by their relative youth. There was also evident a greater variety of mental condition among the street walkers, more of them being distinctly above or below the average, both quantitatively and qualitatively considered.

22. There was a distinct relation between the number of commitments and the seriousness of the mental condition observed, the great majority of repeaters falling in the abnormal groups, with the general ratio maintaining that the more numerous the commitments the greater the abnormality. A similar ratio obtained between schooling and number of commitments.

23. Comparison between the colored and white women showed the former to be of a higher grade in every respect, particularly as regards mentality and number of commitments. This would indicate a distinct difference in the condition of their commitment originally, and that the colored women are not so highly a selected group of the population as are the whites.

General Conclusion

24. The House of Correction does not correct women. This may be due to one of two factors, either the lack of adaptive treatment of individual cases or inherent incorrigibility of the women, due to pathological constitutions. The inherent defects are both (a) congenital, as in feeble-mindedness, epilepsy or the psychopathic types, or (b) developmental, as in alcoholic psychoses, other forms of insanity and delinquent mentality. The women with constitutional defects requiring medical rather than correctional treatment form the great majority—70 per cent.

For the remaining 30 per cent correctional treatment may be assumed to have potential value, but its form requires considerable modification.

RECOMMENDATIONS

I. Provisions for Individual Treatment

The most important principle of modern penology is that the individual offender, rather than the particular offense, is the concern of society. This principle is gradually remodeling our penal institutions, beginning, curiously enough, with prisons for serious offenders rather than in the houses of correction, workhouses and so-called reformatories where offenses are punished of such character that society

has no particular reason to fear the offenders, and so be blinded into punishment of a retaliatory character. A reformatory institution does not automatically result from the removal of the mechanism of vindictive punishment that formed the basis of the older prisons, any more than wise child care results automatically from the sparing of the rod. The House of Correction of Philadelphia is strikingly free from any signs of harsh, humiliating or degrading treatment. The officers are uniformly kind, and in three months I never heard anything approaching complaint by the inmates as to personal treatment. But the fact remains that the women, at least, are neither "corrected" nor "reformed." It is probable that only a small proportion of the women are fit subjects for reformatory treatment, even of the most approved sort. The few, however, should be given the benefit of this, and for the others the same treatment would be the best means of studying them and making provision for their permanent care. The basis of all of the following recommendations is that reformation is possible only with the most complete attention to the needs of each separate individual, and with treatment varied in accordance with this.

II. *Legal Considerations*

A. *Law of Increasing Length of Sentence.*—The single, most serious defect of the present practice in regard to commitments to the House of Correction is the failure to obey the law regarding increasing the length of the terms with successive commitments. Repeated short sentences for minor offenders were declared by the American Prison Congress at Cincinnati in 1870 to be "worse than useless; that, in fact, they rather stimulate than repress transgression. Reformation is a work of time; and a benevolent regard to the good of the criminal himself, as well as to the protection of society, requires that his sentence be long enough for reformatory processes to take effect." No one familiar with prison conditions has ever seriously questioned the wisdom of this statement.

One difficulty in the way of the individual magistrates obeying this law is that no central records are kept, or at least consulted, whereby they can know certainly how many times a person has served. The House of Correction authorities, however, know, and it would be a simple matter to leave the question of the term indefinite, to be determined by the superintendent after the person has arrived at the institution.

B. *Alternative of Formal Trial.*—It is probable that it will be some time before the general public, as represented by our magistrates, will accept the principle of treating individuals rather than isolated offenses, and until they do so, it will be practically impossible to enforce

this law. The alternative is suggested, therefore, of requiring a formal trial by jury, or at least in a court of record, before sentencing an individual for more than three months. This would relieve the magistrates of facing the dilemma of breaking the law or violating their own sense of justice. It would also force attention to this problem, so that there should result some sort of comprehensive plan of community care for this unfortunate and dangerous class.

C. *Parole System*.—There should be developed a full system of parole, which should include the following features:

1. Indeterminate sentence, with graduated minimum terms for repeaters, along line of present law.
2. Preliminary investigation of all first offenders, with provision for temporary commitment pending investigation.
3. Investigation of all cases while serving time.
4. Making of plan for each case before discharge, which shall include aid in securing employment. Special attention should be given to work in non-license districts.
5. Place of refuge while seeking work, and help in going to place of work.

D. *Permanent Custodial Care*.—More important for this particular class of offenders than a system of parole would be legal provision for the automatic transference of all cases found to be truly inebriate or otherwise mentally incompetent to institutions for permanent custodial care. At present there is no permanent provision, except for the violently insane and a small percentage of the feeble-minded. Alcoholics are treated for a few days only at the Philadelphia General Hospital, and are sent out as soon as they can be, while commitment to Norristown under the Habitual Drunkards' Act is extremely cumbersome. There should be either in or officially connected with the institution some body of people who should have authority to act in these matters on behalf of the city, without intervention of private individuals. In other words, permanent custodial care for all found to be socially incompetent, should be compulsory, and the burden of securing it should rest upon society through governmental agencies.

III. *Matrons*

A. There should be more matrons in order to secure:

1. Shorter hours of work, making possible eight-hour schedules, with provision for evening occupations of inmates. At present the matrons are on duty 12 hours, with 30 minutes for dinner.
2. Fewer women to a matron.

B. The matrons should be paid more, the ideal being equal pay for equal work as compared with the men officers. As this is practically impossible at present, owing to women's lack of political value, the salaries should at least approximate those paid to women of whom equally intelligent service is required in other branches of public service.

C. There should be greater opportunities for normal and wholesome living for the matrons, if they are to render intelligent service. At present the matrons live within the walls of the institution and in constant contact with the inmates. They have nowhere to receive their friends. This is a needless and harmful waste of human energy. The matrons should have a house separate from the institution, similar to those provided for the superintendent and warden. Every encouragement should be given them to the freest contact with normal human society, and means provided to this end. At least weekly visits to town should be provided for, including carfare.

D. The matrons should be relieved from having to supply their own uniforms.

IV. General Physical Provisions.

A. *Food*.—There should be a thorough investigation into the question of the food provided for the inmates. This may be undertaken by the Department of Health. Particular attention should be directed to the securing of a well-balanced ration, including butter, milk and eggs and fresh fruit and vegetables. It is probable that the fruit and vegetables, as well as the eggs and butter, might be produced on the place. The amount and kind of tea allowed should be carefully considered. Attention should be given to the matter of the service of the food, which is at present most unappetizing.

B. *Exercise*.—Immediate provision should be made for regular outdoor exercise daily, through the year, for every woman. This should not be voluntary, but compulsory, except in cases of real illness.

C. *Corsets and Shoes*.—The question of providing corsets for the older women and such as have borne children should be carefully considered. The stated objection to allowing the women to keep their own corsets on entrance is that they might use the stays to injure themselves or others. I do not know whether this is simply a precaution or whether it is based on experience. Careful physical examinations would unquestionably reveal many cases of lapsed muscles and viscera that might be benefited by properly fitted corsets.

The same sort of consideration applies to the care of the women's feet. Many are obviously flat-footed, and the shoes provided are of archaic design. The point that is important in both these connections is that defective posture from whatever cause sets up a series of nervous irritations, which, in the end, diminish seriously the store of energy available for use in the higher mental processes, and, in consequence, lessen the chance of character development.

V. Provision for Study of Individuals

The more seriously the task is undertaken of making the House of Correction a reformatory in fact, as in name, the greater need will there be for a comprehensive plan of study of each individual. There are two reasons for such a study:

A. Elementary justice requires that the charges upon which individuals are deprived of their liberty for any period whatsoever should be thoroughly substantiated. It would be impracticable with our scattered magistrates' courts to expect the investigations to be carried on through the local offices. With a central Municipal Court handling all minor offenses, as there is in Boston, it might be possible to investigate all cases before commitment. Under the circumstances that are likely to prevail in Philadelphia for some time to come, it would be feasible to have the magistrates and the House of Correction use the Probation Department of the Municipal Court for their investigating staff in connection with the institution, and to look into the conditions of all first commitments by magistrates, and to verify statements made by any person committed at any time.

B. If, as it appears, in the case of the women at least, that nearly all inmates are in the institution for sufficient cause, a study of individuals becomes even more important, in order to properly deal with them while there, and to make a plan for their future which shall protect them and society most effectively.

The essentials of any plan of individual study are as follows:

A. *Physical and Medical Examinations.*—Each person should be examined by a competent physician on entrance, who should determine not only the presence of contagious diseases, but look for chronic ailments and physical defects that may be alleviated, if not entirely relieved. Most important in this respect are: Defective eyes, defective ears, intestinal disorders, anemia, orthopaedic defects, heart trouble, gynecological disorders, venereal diseases and nervous disorders. Laboratory facilities should be available for bacteriological and serological tests.

B. *Mental Examinations.*—Including tests both for feeble-mindedness and all forms of insanity and borderline insanity. Special attention should be given to the type known as psychopathic. In most cases it will probably be better to defer the mental examination until some time after commitment. This will give the person time to become adapted to the institution routine, and to respond more normally than he would immediately upon entrance. It would also give the examiner the benefit of the reports as to the individual's conduct and working ability.

C. *Social Investigation and Follow-up Work.*—All available outside history, including family history, should be secured. This could be done in the great majority of cases by registering with the Bureau of Registration and Exchange of Confidential Information, as most of the people sent to the House of Correction are already known to one or more of the private and public welfare agencies in the city.

D. *Recording.*—All the information obtained in the various examinations, as well as the court record and reports by the receiving officers and other officers, should be kept in the form of individual case records.

VI. *Use of the Information*

After all this various information has been secured, a consultation between all the institution officers concerned should be held, and all the facts in the case taken into consideration in the making of a plan both for the treatment of the individual and for possible parole and after-care. This consultation should take the form of a clinic, which might be held at a certain time daily or several times a week. A case summary should be presented by one of the officers, after which the individual concerned should be given a chance to tell his side and present his own plan. These clinics would be of the utmost benefit not only to the welfare of the individuals studied, but in developing an intelligent interest on the part of the officers for their daily task. At the Sherborn Prison for Women in Massachusetts, such a clinic is held daily, and usually takes an hour. It is attended by the superintendent, the resident physician, the field worker, the recorder and the matrons who are personally acquainted with the women whose cases are to be presented. There is nothing presented that is in the least too technical to be understood by all there and the officers unanimously are in favor of the practice.

A FURTHER EXTENSION AND REVISION OF THE BINET-SIMON SCALE¹

By F. KUHLMANN²

The extension and revision of the Binet-Simon scale of mental tests with which this paper will deal is the result of seven years of continuous work in the examination of over 3,000 feeble-minded of all ages and grades by the writer, and about 2,000 normal children from birth to eighteen years of age by the writer and assistants. During this time a careful study has been made from every point of view of each individual test, the combination of tests into age-groups, and into an age-scale, and methods of scoring and classification. Over a hundred new tests have been tried out and incorporated, modified, or discarded. The net result up to date has been a greatly extended scale of tests, so as to include all grades and stages of mental development from three months to mental maturity, an increase in the total number of tests from 56 in the original 1908 scale of the authors to 129 in the present scale (counting each test as many times as there are ages for which it has been standardized), a thorough standardization of all the tests, and a working out of the general principles that underlie mental tests and the age-scale. I shall limit myself here to a brief statement of the general principles that were followed in producing the present scale of tests, with a few indications of the main results, and the list of tests incorporated in the scale as it now stands

REQUIREMENTS OF THE INDIVIDUAL TEST

Certain requirements were made of the individual test. In eliminating tests from the old scale, and in devising new ones, three aims were kept in mind. The first was to eliminate the personal factor of the examiner in the use of the test and in the interpretation of responses to be obtained with it. The second was to secure as great a discriminative capacity for each test as was possible. By this latter is meant tests that would show as large an increase as possible from one age to the next in the percentage of children passing it. The third was to make each test as far as possible independent of training that

¹Presented at meeting of American Association of Clinical Criminologists, New Orleans, 1917.

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any individual child might have had. To meet the first requirement the test itself must be of such a nature that the directions as to what the child is to do can be stated in such simple and brief form that it will not require variations or supplementing with different individuals. The test must further be such that the response to it is not capable of more than one interpretation by the examiner. The possible responses must all be readily classifiable as passed or failed. In the present scale the procedure for the use of each test is worked out with as much care as is the test itself. For the upper part of the scale all the responses are scored in terms of time taken to do the test and number of errors made. This eliminates completely the personal factor in scoring responses. The introduction of new tests with time and error scoring only has been carried out as far down into the scale as proved feasible. The importance of this objectivity of the test results needs no special discussion. Many otherwise good tests have been suggested and used by examiners which do not meet this requirement. They yield reliable results in the hands of the proper examiner, but are of no great value to others, just as there are examiners of long experience and training who make reliable diagnoses without the use of standardized tests or other scientific methods that they could give into the hands of another not so experienced.

In regard to the second aim, it is obvious that the test is the better the greater the increase in the percentage of children from one age to the next who pass it. What percentage increase can be accepted as satisfactory is determined not by the individual test directly, but by the combined result of all the tests used. The combined result of a few tests, each of which has a large discriminative capacity, may be more reliable than the combined result of a much larger number of tests, each of which has a smaller discriminative capacity. The reliability of the combined result decides whether the discriminative capacity of the individual test is satisfactory. But inasmuch as the rate of mental development normally decreases with age there is on the whole a bigger difference between the percentage of young children of a given age and the next age that will pass a test than is the case with older children. Consequently, the increase in percentage passing a test from one age to the next that may be accepted as a satisfactory increase itself decreases with the age for which the test is designed. In the present scale this difference is as high as 30% and more for young children, and as low as 5% for tests at the upper end of the scale.

In judging whether or not the individual test result is not unduly affected by special training or the lack of it, the percentage passing from one age to the next is not a sufficient guide. It is entirely possible for a test to be statistically very satisfactory in this respect, and yet be a test more of training than of mental development. This is especially true when the statistics cover a very large number of children from different localities. Some very young children are taught to do certain things, but this number is small. As older children are considered, the number that have been taught a certain task naturally increases. It therefore becomes necessary to take into account the nature of the test from this standpoint. The real task involved in the test should be as little related as possible to every day activities or things likely to be taught, at least for tests at the upper end of the scale. Some of the old tests retained in the scale may still be objectionable on these grounds, but were kept because they were otherwise very satisfactory. The new tests introduced, however, were all selected after a careful consideration of this question.

REQUIREMENTS OF THE AGE SCALE

By the age scale is meant a scale that measures in terms of number of years of normal development, and thus scores in terms of mental ages, as does the Binet-Simon system. This method is adhered to in the present scale because it has a number of decided advantages over all other schemes so far presented. The principles underlying the age scale, the requirements that must be met in constructing it, in a word, the theory of the scale, were not worked out by Binet and Simon. These are the contribution chiefly of later workers, and we have still much to learn in regard to them. I shall mention a few general requirements only, on the basis of which the present revision and extension was worked out.

(a) The first is the agreement of age and average mental age as determined by the tests. By this is meant that the average mental age of a large group of normal six-year-olds, for example, must be exactly six years, or at least exactly enough for all practical purposes, and the same for each other year. The original Binet-Simon scale fulfilled this condition fairly well at most points within the age-limits of its real applicability, that is, from the age of about four or five to about ten. It measured nearly a half year too high at its lower end and too low at its upper end. It has proven a relatively easy task to correct the scale in this respect so as to make it accurate in an entirely

satisfactory degree in these average results. But it is not a matter of chief importance.

(b) The chief requirement is reliability of the individual mental age that the scale gives in the examination of the individual case. Average accuracy gives us no clue as to the degree of reliability of the individual mental age, and yet it is in the individual rather than in the group that the interest nearly always lies. The position taken here is that there can be no statistical or mathematical proof of the degree of this reliability. These statistics can give only general indications, but not proofs, because a necessity always involved is that we know beforehand just what the exact mental ages are of the children that we test in order to determine the reliability of the tests. There are two conditions under each of which reliability of the individual mental age increases. These are, first, increase in the discriminative capacity of each individual test, and, second, increase in the number of tests throughout the scale. The efforts in this revision have been directed towards improving these two conditions, and no attempt has been made to find a statistical method whereby to prove the degree of reliability of the individual mental age. No test was included in a given age-group of the scale simply because a satisfactory percentage of normal children of a corresponding chronological age passed it, but only when there was a satisfactory increase in the percentage of children from one age to the next that passed it. The number of tests for each age-group has been increased to eight for age-group III and beyond.

(c) The next consideration concerning the age-scale is the grouping of the tests into age-groups. Two matters only need to be mentioned. The first is in regard to the importance of having each test in its proper age-group, and the second concerns the percentage of normal children of a given age that should pass a test in order to have that test correctly placed in the corresponding age-group. The work on this revision has led me to conclusions quite different from current opinions on both these questions. It has been generally held that the correct placing of the tests in their respective age-groups was of the first importance. I maintain that, theoretically, the grouping of tests into age-groups at all is not a necessity, but largely only a convenience. The convenience, however, is so great that for practical purposes it becomes a necessity, but the fact remains even then that the misplacement of a test by as much as a year or even more is not a serious matter. A given mental age as determined by the age-scale simply means that the case in question can do a certain total number of tests out of

all there are in the system, this number being the same as the average normal child of corresponding chronological age can do. It makes no assumption that the child in question can or cannot do the tests of any particular age-group. The result would be exactly the same if all the tests in the whole scale were mixed up and treated as one group only. But in making an examination it would then become necessary to give all of the 129 tests in the present scale, instead of only four or five age-groups, or 32 to 40 of the 129. With the age-grouping we need only to give enough tests to make sure that none below those given would be failed in, and that none above those given would be passed.

In regard to the percentage of children that should pass a test in order to have that test correctly placed in its age-group my procedure has been first to secure such a grouping empirically as would roughly make the average mental age correspond to the chronological age. All efforts to deduce this percentage theoretically have so far failed. When the scale, however, gives correct average mental ages the question as to the percentage that should pass a test is thereby also empirically decided. The percentage that is found to pass a test in a given age-group when the scale gives a correct corresponding average mental age is the correct percentage for that point of the scale. The revision has gone through a great number of preliminary groupings and regroupings. Old tests were shifted up or down in the scale, and new tests were introduced into an age-group on the basis of what appeared to be the correct percentage that should pass them. These percentages accepted provisionally were revised and corrected again on the basis of the mental ages the provisionally revised scale gave, and so on, until a final adjustment was reached. The scale as it now stands gives only a negligible error in the average mental ages for the different ages. But with this adjustment it was found that the percentage of children of different ages that passed the tests of corresponding age-groups varied from nearly 100% for the very young children to only a little over 50% for the older children approaching mental maturity.

(d) In the question of the number of tests required in successive age-groups there seems to be agreement. This number should be the same for successive age-groups, and not irregular. The revised scale has five tests for each age-group below age-group III, and eight tests for each age-group above age-group II. This number is all that can be used in an examination of a single sitting without extending the latter beyond practical limits.

METHODS OF SCORING AND CLASSIFYING

The original system of tests sometimes allowed one trial and sometimes several for a given test. In some cases a pass for one trial passed the whole test, in other cases two or more trials had to be passed in order to pass the test. This is a correct principle at least for younger children if based on the right procedure. Assuming the several trials of a test to be all of a similar nature, success in one or two trials proves the child's capacity to perform the kind of task involved. Failure in one or two of the trials means only some disturbing factor, usually poor attention or effort. It would be wrong procedure to construct a scale of tests so that the result for each test would always be affected by this one and the same factor. Poor attention and a varying degree of effort is a prominent trait of young children and should be measured by the tests, but not by every one of them.

In tests in which a time and error score are made the length of time taken for the task set and the number of errors made are not always of equal value in measuring mental development. On the whole, time is much more a measure of effort than is error, and a time score should therefore be used less with younger children than with older, or should not count for as much as the error score, when it is used. While this is a general rule, there are tests of such a nature that an increased effort to work fast readily results in an increase in number of errors that is out of proportion to the gain in time. The rule to be followed in determining the method of scoring the result of the individual test is the same in all cases. That method should be adopted which gives the test the greatest discriminative capacity, if the test by itself is to be made as effective as possible. Sometimes this greatest discriminative capacity is secured by allowing only one failure out of several trials for a test, sometimes two or more failures allowed attains this end. In the case of time and error scoring some simple formula that combines the time and error scores into one score is required. It then becomes easy to so adjust this formula as to allow the proper relative amount for time and error to make the test the best possible. A guide in adjusting this formula is the average time scores and the average error scores for successive ages. If the average time score decreases twice as fast with increase in age as does the average error score, then the time score should on the whole count for twice as much in the formula as the error score. Again, since the average time score in terms of number of seconds is generally many times greater than the average number of errors made in a test,

the formula must reduce the time score or increase the error score or do both if the two are to count for the same in the result. The formula for combining the two scores into one, and in such a way as to give the test its greatest possible discriminative capacity, therefore, takes on various forms. Thus in test VII 6 the formula is $T + E$; in VIII 8 it is $T/10 + 5E$; in XI 6 it is $3T + 4E$, etc. With the formula thus determined, the test is placed in that age-group for which the proper percentage of children of corresponding age pass it, when allowing a given score to be attained in order to pass it. Binet and Simon do not discuss in each case why they allow one or two or more failures out of several trials in a test, but it is left to be inferred that it is to make the test of the proper degree of difficulty for the age-group in which they place the test, or in other words, again, to make the proper percentage of children of corresponding age pass it. The present revision makes this a secondary requirement, but adopts the method of scoring the individual test so as to meet the chief requirement of maximum discriminative capacity of the test.

The age grouping of the tests implies that the results are to be scored in terms of mental ages. It is also strongly advised that the grading of different degrees of mental development be made in terms of the intelligence quotient. The advantages of this procedure have been so fully discussed by different writers as to need no further consideration here. One important point, however, remains. This is that a different method of scoring is required for the very upper end of the scale if it is not to measure short at this end. This fault is inherent in the method, for no matter how high the scale is extended, no subject could ever attain the mental age of the highest age-group in the scale. The highest age-group in the scale as it now stands is XV. For the exact determination of any grade of mental development that is at all below normal a change in method of scoring will hardly be required. But the grading of mental development above the mental ages of twelve sometimes has its application, and for this a different procedure is required. The method used here is chosen largely because of its simplicity and ease of adaptation. All the tests in the higher age-groups are scored in terms of time and error. For cases whose mental ages are above eleven years these last and highest ten or twelve tests are used as an independent group, and the average score for the group is determined in examining an individual. The scoring formula for each test is corrected so that each test will count approximately for the same as every other in the group in getting this average. With

this method the maximum mental age any individual can attain is the highest average mental age of normal adults, and is represented by the highest average score for this group of tests that normals of any age from twelve years up attain. This is the limit of any age-scale. If we cannot with mental tests find any further mental development beyond the age of fifteen, for example—that is, if the average score for fifteen-year-olds is just as high as it is for any older normals—then fifteen is the highest possible mental age attainable on a year scale. Theoretically, 50% of fifteen-year-old normals should have a mental development that exceeds the average for fifteen, but this excess cannot be expressed in terms of mental age. Therefore, in the first place, in computing the intelligence quotient of an individual over fifteen years chronologically mental age should never be divided by more than fifteen. In the second place, in order to get the grade of mental development of a person whose score exceeds that of the average normal fifteen-year-old the age scale is in part abandoned. The formula is as follows:

$$\frac{1}{\text{The score he attains with the group of tests}} \div \frac{1}{\text{The average score for his age}}$$

If he is over fifteen chronologically the average score for fifteen is used as the divisor in the second half of the formula. This quotient is in effect the same as the intelligence quotient obtained by dividing mental age by age, and with this procedure the scale of tests becomes unlimited in the height of the score a person who is above the average adult may attain.

SELECTION OF CHILDREN FOR NORMS

Theoretically, the age-scale proceeds on the assumption that the different mental ages in terms of which it expresses its results represent the average capacities of non-selected children of corresponding chronological ages. This assumption can never be more than approximately correct. Non-selected groups of children are never available for testing purposes, and how correct this assumption is then depends on the manner of selection of the children used to establish norms, and not on the degree of non-selection in groups as found. This revision and extension of the scale has made use of the following groups of children and adults: 1. Children examined in various baby contests. 2. Children in a state orphan asylum. 3. Kindergarten children in the public schools. 4. Public school children from the first grade to seniors of the high school. 5. Adult employes of an institution for the feeble-

minded. 6. All grades and ages of feeble-minded in the school for feeble-minded, and special classes in the public schools. None of these groups can be said to be entirely non-selected. Space here will not permit discussing the various selective factors that enter with these different groups. My general experience has been that beyond the age of ten years among public school children the effect of selective factors present has become so great as to necessitate a careful further selection on the part of the experimenter in order to offset these factors and secure approximately average capacities in the children for each age. On the whole, pedagogical advancement is the best single basis for selection. For the highest ages, I have selected the pedagogically normal, calling a child pedagogically normal if he was ten years old near the end of his fourth grade in school, and so on. The one unavoidable difficulty that arises in defining the pedagogically normal lies in the fact that the time of the school year must be taken into account. If the ten-year-old is pedagogically normal at the end of his fourth grade in school, he is not so at the beginning or middle of his fourth grade in school, and in practice the work of testing to get norms cannot all be done at any one time of the year, but must extend through the whole year for several years.

Aside from selective factors present that eliminate school children that are below average in mental development from the schools in different degrees at different ages, there are various social factors that have a selective influence in determining the average capacities of the adults, and hence indirectly of the children in different sections of the country and communities. Prominent among these are race and nationality differences, and differences in predominant occupations calling on the whole for certain grades of capacities. The results in using the original tests in different countries give us some measure of assurance that these differences are not large enough to be fatal to the usefulness of one and the same age-scale for all children. Roughly at least, the scale has given very similar results with children of different nationalities. The question as to whether we should attempt to construct a scale for each race is an open one. From a practical standpoint this is not necessary or even desirable. From this standpoint we care less to know whether a given child is equal to the average of his race than we care to know whether he is equal to the average of the nation's children. For it is the nation as a whole that sets the requirements for its citizens, and not the descendants of any particular race in that nation.

THE LIST OF TESTS IN THE PRESENT SCALE

The following is the list of tests that is used in the present system. They include 37 tests of the 1908 scale, exclude 19 of that scale and add 65 new ones with 92 age-group scorings, or an equivalent of 92 new tests. The latter are entirely new or borrowed from the literature in slightly or very much modified form. In this list they are all marked "B.-S." or "New." If a B.-S. test has been shifted the Roman numeral in parenthesis indicates the age-group from which it was shifted.

Age Three Months. (All new.)

1. Carrying an object to mouth. (New.)
2. Reactions to sudden sounds. (New.)
3. Binocular co-ordination. (New.)
4. Turning eyes to object in marginal field of vision. (New.)
5. Winking at an object threatening the eyes. (New.)

Age Six Months. (All new.)

1. Balancing head and sitting. (New.)
2. Turning head towards source of a sound. (New.)
3. Opposing thumb in grasping. (New.)
4. Prolonged holding of object placed in hand. (New.)
5. Reaching for seen objects. (New.)

Age One Year. (All new.)

1. Sitting and standing. (New.)
2. Speech. (New.)
3. Imitation of movements. (New.)
4. Marking with pencil. (New.)
5. Recognition of objects. (New.)

Age Eighteen Months. (All new.)

1. Drinking. (New.)
2. Feeding with spoon or fork. (New.)
3. Speech. (New.)
4. Spitting out solids. (New.)
5. Recognition of objects in picture. (New.)

Age Two Years. (4 new.)

1. Pointing out objects in pictures. (New.)
2. Imitations of simple movements. (B.-S.)
3. Obeying simple commands. (New.)
4. Copying a circle. (New.)
5. Removal of wrapping from food before eating. (B.-S.)

Age Three Years. (2 new.)

1. Enumeration of objects in a picture. (B.-S.)
2. Pointing out parts of body. (B.-S.)
3. Giving the family name. (B.-S.)
4. Repeating a sentence of six syllables. (B.-S.)
5. Naming of familiar objects. (B.-S. IV.)

6. Repeating two numerals. (B.-S.)
7. Naming pictures from memory. (New.)
8. Tracing a square. (New.)

Age Four Years. (5 new.)

1. Giving sex. (B.-S.)
2. Repetition of three numerals. (B.-S.)
3. Comparison of two lines. (B.-S.)
4. Discrimination of forms. (New.)
5. Tracing irregular form. (New.)
6. Recognition of forms. (New.)
7. Comprehension. (New.)
8. Naming pictures from memory. (New.)

Age Five Years. (2 new.)

1. Counting four pennies. (B.-S.)
2. Copying a square. (B.-S.)
3. Comparison of weights. (B.-S.)
4. Making rectangle with two triangles. (B.-S.)
5. Repetition of sentences of ten words. (B.-S. 1911.)
6. Definition according to use of object. (B.-S. VI.)
7. Tapping blocks in irregular order. (New.)
8. Naming the primary colors. (New.)

Age Six Years. (3 new.)

1. Distinction between right and left. (B.-S.)
2. Aesthetic comparison. (B.-S.)
3. Distinction between morning and afternoon. ((B.-S.)
4. Recognition of mutilation in pictures. (B.-S. VII.)
5. Execution of three simultaneous commands. (B.-S.)
6. Counting irregular series of taps. (New.)
7. Folding a square of paper three times. (New.)
8. Tapping blocks in irregular order. (New.)

Age Seven Years. (2 new.)

1. Description of pictures. (B.-S.)
2. Naming the first four coins. (B.-S.)
3. Telling number of fingers. (B.-S.)
4. Repetition of five numerals. (B.-S.)
5. Comparing two objects from memory. (B.-S. VIII.)
6. Giving word opposites. (New.)
7. Repeating three digits backwards. (New.)
8. Copying a diamond. (B.-S.)

Age Eight Years. (6 new.)

1. Counting value of stamps. (B.-S.)
2. Size of vocabulary. (New.)
3. Folding square of paper five times. (New.)
4. Comprehension. (New.)
5. Giving word opposites. (New.)
6. Giving similarities. (New.)
7. Counting backwards from 20 to 1. (B.-S.)
8. Counting dots. (New.)

Age Nine Years. (3 new.)

1. Giving date. (B.-S.)
2. Arrangement of weights. (B.-S.)
3. Using three words in a sentence. (B.-S. X.)
4. Making change. (B.-S.)
5. Definition better than according to use. (B.-S.)
6. Comprehension. (New.)
7. Repeating four digits backwards. (New.)
8. Counting dots. (New.)

Age Ten Years. (6 new.)

1. Drawing designs from memory. (B.-S.)
2. Counting dots. (New.)
3. Spelling familiar words backwards. (New.)
4. Giving word opposites. (New.)
5. Counting irregular series of 9-12 taps. (New.)
6. Giving the associated numbers for the dissected parts of a simple form. (New.)
7. Crossing out q, r, s, t in a pied text. (New.)
8. Detecting absurdities in absurd statements. (B.-S. XI.)

Age Eleven Years. (5 new.)

1. Words to put in order to make a sentence. (B.-S.)
2. Repeating one or two sentences with 24 syllables. (B.-S. XII.)
3. Giving definitions of abstract terms. (B.-S.)
4. Crossing out q, r, s, t in pied text. (New.)
5. Giving the associated numbers for the dissected parts of a simple form. (New.)
6. Immediate recall of unfamiliar forms. (New.)
7. Giving word opposites. (New.)
8. Locating sections of a divided square from description. (New.)

Age Twelve Years. (8 new.)

1. Crossing out q, r, s, t in a pied text. (New.)
2. Spelling familiar words backwards. (New.)
3. Giving the associated numbers for the dissected parts of a simple form. (New.)
4. Immediate recall of unfamiliar forms. (New.)
5. Giving word opposites. (New.)
6. Following directions in a confusing text. (New.)
7. Locating sections of a divided square from description. (New.)
8. Drawing triangles on squares according to directions. (New.)

Age Thirteen Years to Maturity. (8 new.)

1. Immediate recall of unfamiliar forms. (New.)
2. Giving word opposites. (New.)
3. Following directions in a confusing text. (New.)
4. Locating sections of a divided square from description. (New.)
5. Drawing triangles on squares according to directions. (New.)
6. Drawing upright forms in inverted positions. (New.)
7. Making logical inferences. (New.)
8. Simple arithmetical operations. (New.)

THE IMMORAL WOMAN AS SEEN IN COURT

A PRELIMINARY REPORT

V. V. ANDERSON¹

It is not the purpose of this paper to discuss the magnitude and seriousness of the so-called vice problem. Numerous vice commission reports dealing with its various aspects are at hand. It was hoped however, that a study of this sort might throw some light upon one phase of the situation, namely, the offender herself; what she is and what she needs; what her physical and mental condition are, and what main lines of treatment are indicated. More particularly was it our purpose to secure facts for orientation in regard to a certain group of women offenders passing through this court.

For the purpose of the study a group of one hundred individuals representing "the run of the mine" in court was chosen. No other basis for selection was required than that each individual should have been arrested for an offense against chastity. An effort was made to examine each person more or less in the order in which she appeared in court.

The case records were collected during the months of January and February, 1917, at which time the probation officers in court endeavored to secure an examination wherever possible of each woman offender of this type.

It is quite likely that the group selected is a representative one, and presents a fair picture of this type of offender in general. At least the situation is not overdrawn.

The following table of arrests would indicate that the worst side of the picture is not brought out, for the majority of our individuals are first offenders, not quite one-fifth being recidivists. The term recidivist is used to refer to those who have been arrested three or more times.

TABLE I.

SHOWING FREQUENCY OF ARRESTS AMONG 100 IMMORAL WOMEN IN COURT.

First offenders	56
Second offenders	25
Recidivists	19
Total	100

¹Medical Director, Municipal Court, Boston, Mass.

Eighty-one per cent of our cases were either first or second offenders—individuals who from a purely legal and social point of view had not yet become serious problems. Likewise the majority were young people, though none were under seventeen years, these being tried before the Juvenile Court.

TABLE II
SHOWING AGES OF 100 IMMORAL WOMEN IN COURT.

Oldest age	54 yrs.
Youngest age	17 yrs.
Average age	26 yrs.
Total number under 30 yrs.....	74

The average age is 26 years. The large percentage of our cases (74%) under 30 years is not at all surprising in view of the requirements for such a calling.

The frequency of alcoholism and drug addiction among immoral women is well recognized. While in this particular study no attempt was made to go seriously into this phase of the problem, to determine the relation of alcohol and drugs to the immoral conduct of these women, still a certain amount of data along these lines was secured. The following table indicates the proportion that showed use of such upon examination:

TABLE III.
SHOWING PROPORTION OF 100 IMMORAL WOMEN USING ALCOHOL AND DRUGS.

Alcohol	34
Drugs	12
No evidence of either.....	54

Thirty-four per cent, or a good one-third were in the habit of using alcohol. Twelve per cent, almost one out of every eight individuals was a drug habitue.

It is quite likely that a much larger percentage of these cases were using both alcohol and drugs than is shown here, for only those cases were recorded that gave evidence of such on examination.

The industrial inefficiency of the prostitute is a well known fact. Their incompetence and consequent inability to support themselves by legitimate means has been offered as a most important factor underlying their delinquencies. Among this particular group of immoral women such wholesale inefficiency is not found. On the contrary the number of individuals that seemed to be supporting themselves by legitimate means was surprising.

TABLE IV.

SHOWING INDUSTRIAL EFFICIENCY OF 100 IMMORAL WOMEN IN COURT.

Regularly employed	17%
Irregularly employed	33%
Odd jobs	2%
Never work	31%
Housework at home.....	17%

Seventeen per cent were regularly employed, while about 50% seemed to be self-supporting. These facts are possibly better understood in connection with later tables of mental findings.

As above mentioned, the average age of the group is 26 years; all are, from a physical point of view, adults. The mental ages, however, as shown in the following table would indicate that from the point of view of their mentality we are dealing with a much younger group of individuals, many having the mental level of children. (In this connection it should be remembered that native intelligence reaches its complete development not far from 16 years of age.)

TABLE V.

SHOWING THE MENTAL LEVEL OF 100 IMMORAL WOMEN IN COURT.

Between 8 and 9 yrs.....	2%
Between 9 and 10 yrs.....	10%
Between 10 and 11 yrs.....	17%
Between 11 and 12 yrs.....	20%
Subnormal (12-16 yrs.).....	26%
Adult (16 yrs. +).....	25%

Forty-nine per cent of these individuals had a mental level below 12 years; 51% a mental level above 12 years.

Almost the same proportion of individuals as were found self-supporting were found to have a mental level over 12 years. Likewise with a percentage of fifty not self-supporting, we find about the same number—49%—are under 12 years. These facts become more significant in the light of the following table:

TABLE VI.

SHOWING THE MENTAL DIAGNOSIS OF 100 IMMORAL WOMEN IN COURT.

Normal	20	20%
Dull normal	32	32%
Feeble-minded	30	30%
Epileptic	6	6%
Alcoholic deterioration	2	2%
Drug deterioration	2	2%
Psychopath	7	7%
Psychosis	1	1%
	<hr/> 100	<hr/> 100%

Forty-eight per cent are pathological mental types, among which

feeble-mindedness ranks highest. Twenty per cent were apparently normal, using the term normal in the very broadest sense, and meaning by it to include those individuals who gave evidence of good general intelligence, were stable, well-balanced, and showed nothing pathological either in past history or present examination. To be sure, they all possessed traits of character that could be classed as delinquent; traits which varied greatly among the individuals themselves, and which were present in greater proportion and frequency than is to be found in the non-criminal population.

Thirty-two per cent were called subnormal—a class of individuals too intelligent and capable to be considered feeble-minded, and yet obviously inferior to the normally developed adult mind. This group might be better termed “The Dull Normal Group.”

“A normal mind requires a healthy body to attain its highest efficiency.” How necessary it is then to obtain a survey of the physical health of these individuals, as well as their mental condition. While feeble-mindedness can not be cured, physical health may be restored.

TABLE VII.

SHOWING THE PHYSICAL CONDITION OF 100 IMMORAL WOMEN IN COURT.

Good physical condition.....	14	14%
Fair physical condition.....	42	42%
Poor physical condition.....	36	36%
Bad physical condition.....	8	8%
	<hr/> 100	<hr/> 100%

Forty-four per cent were in poor or bad physical condition, and that from diseases other than venereal (tuberculosis, asthma, heart disease, Bright's disease, rheumatism, pelvic tumors, drugs, alcohol, etc.), and were urgently in need of medical treatment.

The relationship which the physical condition of these individuals bore to their industrial efficiency is shown in the following table:

TABLE VIII.

SHOWING RELATIONSHIP OF PHYSICAL CONDITION TO INDUSTRIAL EFFICIENCY OF 100 IMMORAL WOMEN IN COURT.

Physical Condition	Regularly Employed	Irregularly Employed	Odd Jobs	At Home	Do Not Work	Total
Good	1	5	0	4	4	14
Fair	12	14	0	5	11	42
Poor	3	12	1	8	12	36
Bad	1	2	1	0	4	8
	<hr/> 17	<hr/> 33	<hr/> 2	<hr/> 17	<hr/> 31	<hr/> 100

Thirty-two per cent were in good or fair physical condition, and were self-supporting.

Eighteen per cent were in poor or bad physical condition, and were self-supporting.

Twenty-four per cent were in good or fair physical condition, and were not self-supporting.

Twenty-six per cent were in poor or bad physical condition, and were not self-supporting.

Syphilis and gonorrhea were not included in the above list of diseases causing impaired condition of health referred to, for the reason that it seemed best, in view of their grave social significance, to discuss them separately.

TABLE IX.

SHOWING FREQUENCY OF VENEREAL DISEASE AMONG 100 IMMORAL WOMEN IN COURT.

Syphilis	39
Gonorrhea	32
Combined	10
Total	<u>61</u>

Among these one hundred individuals there were thirty-nine cases of syphilis and thirty-two cases of gonorrhea. In ten cases the condition was combined. In all, sixty-one individuals were suffering from venereal disease, (this is a conservative figure, as only positive bloods and smears were counted). These two conditions rank among the greatest of all social evils, and that principally because their nature is only grasped by a few. Medical men recognize the seriousness of the situation, but the full importance of a general education of the public along these lines is not appreciated.

Syphilis and gonorrhea form a combination possibly as productive of evil as any scourge that has ever afflicted mankind. These two conditions are striking at the very sources of life, and deteriorating the human race. The high percentage of miscarriages associated with this condition, the fact that this disease ranks first in its ability to cause destructive diseases of the nervous system, the fact that in its wake follow idiocy, epilepsy, feeble-mindedness, insanity, locomotor ataxia and such, make the early recognition and treatment of syphilis a matter of the gravest importance to the general public.

The seriousness of gonorrhea, especially to women, and the growing army infected, is a source of much alarm to serious-minded students of the subject. Few diseases afflict women that are fraught with more permanent harm. It exists in every degree of severity. In some it produces only the very mildest symptoms, in others the fulminating signs are present—acute inflammation of the tubes and

ovaries, abscesses and peritonitis. Between these lie all degrees of pelvic ills, acute and chronic. This condition is the most prolific source of extra-uterine pregnancies, spontaneous abortions and sterility. It is a large and important factor in causing blindness, and many other serious conditions.

In short we have in these two conditions, diseases of such grave significance to society in general, and the individual in particular, that, providing they exist in such frequency as above indicated (61%) among this group of offenders, a serious duty becomes imposed upon those who would protect the general public, while seeking to do the best possible for the individual. And this duty consists in having every offender who through known illicit sexual relations has exposed himself or herself to the danger of infection with syphilis and gonorrhea examined to determine whether such a condition exists. And this not only in the light of protecting society from a serious menace to public health, but as a matter of common humane interest in the individual. It is the common belief that these conditions are only frequent among the common prostitute, and that a carefully gotten social history will reveal those who should have an examination made for venereal diseases, that the young individual, the first offender, who has not been promiscuous, is liable to be free from such.

The following table is significant, particularly in view of the fact that the majority were first offenders and were young individuals.

TABLE X
SHOWING RELATIONSHIP OF VENEREAL DISEASE TO FREQUENCY OF OFFENSE AMONG
100 IMMORAL WOMEN IN COURT.

	First Offenders	Second Offenders	Recidivists
Syphilis	56	25	19
Gonorrhea	24	8	7
Combined	21	9	2
Combined	8	1	1
Total number with venereal disease.....	37	16	8

Fifty-six were first offenders, 25 were second offenders, and 19 were recidivists. Of these 56 first offenders, 66%, or two-thirds, were suffering from either syphilis or gonorrhea. The fact that only 42% of the recidivists showed positive laboratory findings, is possibly to be explained in the light of the well known interference of alcohol with the Wassermann reaction (recent alcoholism having been found common among the recidivists); also some were undoubtedly undergoing treatment at the time. Finally it must be borne in mind that the common prostitute, as time goes on, becomes more adept in protecting herself from venereal disease.

There is only one safe and sane method of finding out whether an individual needs an examination for venereal disease, and that is to determine exposure to such through having had illicit sexual relations.

Inasmuch as behavior finds its fullest explanation in the mental life of an individual, we have been led to expect a close correlation between abnormal mental conditions and misconduct. Such is the case in this group studied. In fact, so marked is the correlation that one can practically say that the greatest distinction between the first offender and recidivist is a psychological one, and consists in a difference in mentality of the individuals themselves.

TABLE XI.
SHOWING RELATION OF MENTALITY TO FREQUENCY OF OFFENCE AMONG 100
IMMORAL WOMEN IN COURT.

	First Offenders	Second Offenders	Recidivists	Totals
Normal	16	3	1	20
Dull normal	19	11	2	32
Feeble-minded	11	8	11	30
Psychopath	4	0	3	7
Epilepsy	3	2	1	6
Alcoholic deterioration	1	0	1	2
Drug deterioration	1	1	0	2
Psychosis	1	0	0	1
Totals	56	25	19	100

Thirty-nine and three-tenths per cent of first offenders, 47.2% of second offenders and 84.2% of recidivists were suffering serious mental handicaps. As it can be expected that on a hot summer day the majority of pedestrians will be found on the shady side of the street, so can it be predicted that a certain group of offenders, all things being equal, will find themselves unable to measure up to the social standards of the complex community life of today, and will appear again and again in court.

Preventive criminology would consist in determining beforehand the members of this group, and marking them for special supervision—such supervision as would take into consideration their peculiar needs and their special adaptabilities, if any success in adjustment is to be attained.

Having drawn attention to the physical condition, the mental condition, the industrial efficiency, the frequency of venereal diseases, alcohol and drugs among these women, it might be worth while to consider the constructive aspect of the situation; for, after all, it is the question of human salvage that we are more interested in here, and not the particular kind of punishment needed.

TABLE XII.
SHOWING RELATED MENTAL AND PHYSICAL CONDITION AMONG 100 IMMORAL
WOMEN IN COURT.

MENTAL	Physical Condition			
	Good	Fair	Poor	Bad
Normal	3	8	6	3
Dull normal	5	11	15	1
Feeble-minded	2	18	8	2
Epilepsy	1	3	2	0
Alcoholic deterioration	0	0	2	0
Drug deterioration	0	0	0	2
Psychopath	3	1	3	0
Psychosis	0	1	0	0
Total	14	42	36	8

Twenty-seven per cent possessed good or fair mentality, and were in good or fair physical condition.

Twenty-five per cent possessed good or fair mentality, and were in poor or bad physical condition.

Twenty-nine per cent were in poor or bad mental condition, and in good or fair physical condition.

Nineteen per cent were in poor or bad mental condition, and in poor or bad physical condition.

In short, a certain number of our cases (27%) were in such physical and mental condition as would enable them to return to the community.

Twenty-five per cent were, from a mental point of view, capable of adjustment under intelligent supervision, but were physically in need of medical treatment.

Twenty-nine per cent were suffering from such mental handicaps as to render it unlikely that they would conduct themselves normally unless under very careful supervision—supervision suited to the special needs of their case.

Nineteen per cent were in such poor or bad mental condition, and such poor or bad physical condition as to render outside adjustment risky, but were in need of prolonged treatment under detention.

SUMMARY

In this study an attempt was made to secure for examination a group of one hundred women offenders in court, who might fairly well represent the so-called offenders against chastity.

The group selected contained 56 first offenders, 25 second offenders, and 19 recidivists. All told 81% were either first or second offenders.

The average age was 26 years.

Alcoholism was found in thirty-four persons, and drug addiction in twelve.

Forty-nine per cent had a mental level below 12 years; 51% were above 12 years.

Forty-eight per cent were suffering from serious mental handicaps, among which feeble-mindedness ranked highest (30%).

Forty-four per cent were in poor or bad physical condition from diseases other than venereal, and were in need of medical treatment.

More than three times as many persons who were regularly employed were found in good or fair physical condition as were found in poor or bad physical condition. The restoration of an individual's health might well be one of the most effective means for securing successful probation in her case; for the woman in bad health stood about one-third the chance of the woman in good health for regular employment.

Syphilis and gonorrhea were found present in 61% of these cases. There is no satisfactory method of selecting the particular individuals among known immoral women in court who should and who should not have an examination for venereal disease; for the first offender is just as liable to be infected as the common prostitute. In these cases 66% of the first offenders were suffering from syphilis or gonorrhea.

There is a very high correlation between the frequency of offense and the mental condition of these individuals. Thirty-nine and three-tenths per cent of first offenders, 47.2% of second offenders, and 84.2% of recidivists were suffering from serious mental handicaps.

Preventive criminology looks towards the ascertainment of the mental condition of such offenders in advance of their treatment.

Taking the group as a whole, about 27% were in such good physical and mental condition as would enable them under probation to return to the community.

Twenty-five per cent were from a mental point of view capable of adjusting themselves under well planned probationary supervision, but were physically in need of urgent medical treatment.

Twenty-nine per cent were suffering from such mental handicaps as to render it unlikely that they would conduct themselves normally in the community unless under very special supervision—supervision suited to the peculiar needs of each case.

Nineteen per cent were in such poor or bad mental condition, and such poor or bad physical condition as to render any attempt at outside adjustment inadvisable, and were in need of prolonged treatment under detention.

SOME ESSENTIALS OF CONSTRUCTIVE CRIMINOLOGY¹

DAVID COOMBS PEYTON²

Thinking men cannot have failed to note for some years the abnormal symptoms in the body politic. The unhealthy sentimentality, crass creeds, mountebank philosophy, loud mouthed political fakers with cure-all nostrums for the public weal. All these betoken a disease state. In the new renaissance, when peace shall have settled down over the earth, out of the horror of these turbulent years among the many evidences of improvement let us hope and believe there will be a rejuvenation in the science of prison management, and this science must be founded upon the great underlying fundamental—common sense. The ideal prison will not so quickly appear, for indeed in real life the ideal is never attained. Progress is measured in degree of approximation to the ideal, but the supreme end—the “*summum bonum*”—is never reached.

In prison management there have developed two colossal evils. One was peculiar to the past and the other in a measure characterizes the present. Most of the evils that are associated with prison work have come from these two roots. They are as antipodal as east and west. They are cruelty and sentimentality. As the first was the child of ignorance, the second springs from half knowledge and is not the less reprehensible. True reform will come not by a softening and relaxation in prison discipline, not by imputing to criminals qualities which their whole activities have proven them to lack and the very absence of which is the cause of their incarceration, not by making their pathway smoother and easier, nor yet by touching it with the magic of romance. If a little of the leaven of common sense were allowed to permeate the situation it seems to me that the clouds in our pathway would lift somewhat.

Of course, cruelty, the other *bete noir*, is only named to be condemned, and thanks to our even half-knowledge it has no place in modern prisons except in isolated spots. But I doubt if ever cruelty

¹Presidential address at the Annual Conference of the American Prison Association, New Orleans, La., November, 1917.

²Retiring President of the American Prison Association, Medical Superintendent of the State Reformatory, Jeffersonville, Ind.

was any more cruel than a regime which threatens to become popular today. It seems to me that prisons should be run for the purpose of training men for sane living. If that is true, then they should in fact train these men for sane living.

Life is a school and the spirit of the world is the teacher. Every man is required to enroll therein that he may master sufficient of the social heritage pertaining to the behavior of the individual in respect to the social groups to enable him to measure up in a satisfactory manner to those standards of behavior which society deems right and just. Each day the school of life presents new tests; each day the failures are registered in houses of ill fame, the saloon, the gamblers' den, and are finally entered upon the dockets of the police courts, the courts of justice, or the roster of penal institution. Such is the material with which prisons are stocked. These failures must be re-educated that they may again face and solve the world test. To destroy and to cover up the past; to reorganize; to re-equip; to rebuild—in short, to reform the lives of human beings who have passed the quarter mark in life's course. What a noble ideal! How difficult to realize!

Fundamentally his mental powers and neurological organization may be greatly deficient or extremely unstable; or if the neurological organizations and the mental powers are not different from those of men on the outside, it will be found that his judgments are mostly false and the life experiences are so organized and so assimilated that they continually prompt reactions which are at variance with behavioristic forms of society; and these experiences, the accumulations of months, years, or even a lifetime, must be changed and reassembled. It is not sufficient to minister alone to his physical being; indeed that is only the beginning. The work of reformation and re-education will be in evidence only when false judgments have been supplanted with true ones and when the subject is given a series of life experiences from which may crystallize attitudes that will direct his activities in such channels as will lift him from the sordid life to a plane of self-respect, usefulness and service. If it is a mere veneer, the storms of adversity will quickly wash it away; but if it is deep, the foundation is secure on which the rejuvenated youth may build a life pure and noble.

In the matter of causation an intelligent analysis must be undertaken with a view to determining its underlying elements, diagnosis and prognosis, or cause, classification of the abnormality, and the probable outcome. To accomplish this satisfactorily we at once find our-

selves turning to the field of scientific research. It seems to me that it can be no longer questioned that we are confronted with a condition that is so intimately related to and interwoven with feeble-mindedness that the expression that "every fool is a potential criminal" can no longer be denied. We find ourselves at once dealing with a condition that is distinctly in the realm of neuropathology, having to do with the higher function of mental life. A careful investigation of thousands of cases justifies me in the statement that the essential or determining defect is found both in the field of judgment and moral sense governing ethical relationships. In most of these cases there has been such a serious retardation of the development of the higher centers as to render the individual incapable of drawing proper conclusions or appreciating the finer relationships as to render him incapable of understanding the spirit of altruism, and we find an obtunded, dwarfed condition of the whole moral life. It is not infrequent that we find a fairly well developed state of the general intelligence, thus enabling this class of men to become more or less proficient in the mechanical and general industrial fields, but in a vast majority of cases there is a distinct lack of development of that mental function which is the highest of all the purely mental activities—judgment—and which is absolutely essential to the higher degree of industrial success; and in practically every individual of this character we find a serious and in many instances a fatal defect in the moral sense.

I am convinced that not only is this defect basic but that it has its origin in a central malnutrition, and that this same central malnutrition results alike in both the mental and physical defects or malformations so characteristic of and universally found in our defective classes. So-called criminals, or men who violate the law, especially against property rights, are not born as such per se, but individuals with expressions of this central malnutrition are born and their criminal activities are not due to the fact that they are defectives, but that there has been a failure in the home, in the church and in the school, and this failure is the determining factor in the production of the criminal. These unfortunate human units, with their higher essential centers of development dwarfed by reason of the transmission of some serious defect, are not recognized as such at any point along the line of their development period, and they drift into the exciting, vicious, environmental influences as naturally as does the water flow down stream, with the never failing result that in these unfortunate individuals this concentrated environmental toxine finds a most fertile soil and their activities are directed along anti-social lines.

I must not be understood as contending that all criminal or anti-social activities are to be found in only those with a transmitted hereditary defect, but I would also emphasize the thought that during the early, impressionable period of development of the individual, regardless of the fact that he may be possessed of the very finest degree of heredity, that by subjecting him during this period to the vicious and exciting influences with which our social organization is so impregnated, it is most likely that the individual young life thus exposed will be so weakened in its moral sense that it will be difficult to re-establish a normal growth in the higher functions. Especially is this true if these malignantly destructive influences are continued for a prolonged time during the early years of the moral life.

It must be recognized that we are dealing actually with an essential pathology and that criminal activity is not the expression of voluntary will but that it is an expression of an underlying, fundamental defect of the higher sense, just as much so as is the chill an expression of diseases.

From the foregoing it will be seen that the field of science is now challenged to its greatest efforts in order that it may accomplish an intelligent understanding of the rationale of criminal activity. A bedside study of the daily routine of the so-called criminal, and a laboratory research with its completest possible armamentarium for a most careful mental and physical examination, are indispensable, for it is quite necessary that we should have the best possible understanding of the underlying elements of causation in order that we may intelligently determine a comprehensive and fairly promising method of procedure.

We now come to the question of treatment, and this, I insist, must be founded upon the broadest possible scheme of educational development. Learning comes in many other ways than by the perusal of books. Life itself provides an education for those who observe. Indeed school training is merely the preparation of the student in the methods of observation so that he may react advantageously to life's varied stimuli. We have contended heretofore that the anti-social condition is the result of destructive influences and we must intelligently bring into operation the simplest yet strongest constructive influences in the development of the moral life in the plan of our educational training. These men in their early lives have developed without a restraining and guiding influence, and this wild and unrestricted development has become such a fixed character in their make-up that they are resentful of all forms of authority so essential

to the perpetuation of normal society. A decided majority of these men comes from the field of idleness. They have lived almost constantly in an atmosphere of combat, excitement and all forms of irrational indulgences. The primary work of the school has been neglected or evaded. The emotional side of their lives has been overdeveloped, the moral training so necessary to the development of the moral sense has been a negligible quantity in their career.

In the treatment to overcome or counteract these conditions it appeals to me as most essential that these men should be handled along lines of a sane firmness, tempered with kindness and absolute justice. The fact should not be lost sight of, however, that the development of these men has been along lines of uncertainty and irregularity, and that germane to the whole problem of intellectual construction, reasonable firmness, kindness and justice should be ever enforced. These men, as it were, are suffering from a general weakness of the whole moral body and they should be firmly held with the strong splints of necessary restraining and directing control until the whole scheme of educational training has given to them at least a degree of strength in the way of moral co-ordination until there is a reasonable hope of its withstanding the competitive influences met with in organized society. They must be taught not only industrial habits but how to work, and in many instances this has been wholly neglected.

The foundation stone of constructive criminology is the educational training of prisoners—education in its broadest sense—and one of the elements of this educational training that stands out so conspicuously in the scheme that it is annoying that any one should miss it, is that prisoners should work hard. Many former inmates of prisons fail on parole because their prison life made them soft and they cannot endure the “hardships” of hard work. What would we say could the criticism be leveled against the cantonments where our boys are taking training for participation in the great war?

A modern prison should be a beehive of industrial activity and should be more than self-supporting. Indeed men should be able to serve their sentences and earn enough overtime money during their terms to support their dependents—at least in part. A trade should be taught when practicable, but even more important than a trade is the idea of inculcating industrious habits. It is not a misfortune for men to have to labor, but it is a blessing both for them and for us.

Discipline should be strict but not arbitrary. The rules should be based on experience and should be obviously sound.

Punishment has a place in prisons, but it should be logical; should, as far as possible, flow as a natural consequence from the transgression, according to the pedagogical rule of Spencer.

The industrial training should be correlated with the didactic instruction and prison library. The three should form the tripartite educative force of the institution.

Certainly at the very outstart the inmate population should be divided into groups, as many as three at least—normals, near-normals and abnormals. Those that are chronically anti-social should be kept in the institution permanently; only those apparently fit should be returned to society. The process of segregation should be made on the basis of mentality and only an examination by a competent physician or psychologist should determine that point. Of course all institutions should be equipped with psychological laboratories, if for no other reason than to facilitate the segregation. For whether we make an actual physical separation or not, we do in effect handle them with that idea unconsciously held—responsibility, near-responsibility, irresponsibility. We treat them differently.

The institution should have another attribute, and that is Justice. Let me name the three Graces that should preside—Educational Training (Mental and Industrial), Common Sense Management, and Justice. If these three qualities characterize a prison it will satisfactorily discharge its function, that of rehabilitating society's moral and social derelicts.

The general moral sclerosis, resulting from the life of combat and irrational and exciting indulgences, the result of their early environments, is not easily corrected and is impossible of a complete curative result. This condition has been intensified and the treatment made more difficult by reason of the absence of school and moral training. We find therefore that we must train these men to understand the fundamental necessity of general laws governing human conduct and to respect these regulating precepts. It is found that the school of letters in which some of the fundamentals of a common school education are taught, an understanding and a simple application of some of the primary principles of a military training, and moral instruction, are important in the constructive educational scheme. There is nothing more distinctive in the developmental process of these men under the vicious influences of their lives than the over-development of the emotional side. They laugh inordinately; they cry easily; their explosions of temper, resulting at times in serious attacks on their fellow

men, all evidence an irrational, emotional development; the fact that usually we find these individuals with a rapid heart action and a sub-normal temperature serves to further emphasize the presence of a neurological abnormality. In the general scheme of treatment let me enjoin upon you the advisability of avoiding those things that serve to arouse the emotions or to still further excite and strain the emotional life, for it is impossible to construct upon an over-emotional foundation a life of rational activity. All forms of emotionalism and maudlin sentiment are as destructive to a strong and sane individuality as is brutality; the over-stimulation by any form of artificiality of any part of the nervous organism lessens its strength. I would not have you understand that I do not believe in a sane, strong sympathy, for that indeed is constructive and helpful and serves as a most essential element in the upbuilding of a strong character foundation for a worth while citizenship.

I have tried to indicate in this paper my earnest conversion to the thought that this greatest of all scientific problems—the analysis of the human mind—must be solved, if solved at all, by the application of the principles of a sane, rational, scientific understanding of its underlying principles, and its treatment lies in the constructive influences of a broad, comprehensive educational plan looking to the development of the principles of a better life.

May I not then submit that constructive criminology is builded upon broad, deep and far reaching principles of scientific research and educational development? Thus modern science and human kindness have supplanted the ignorance and brutality of the past.

Let us so live as to guarantee to future generations that the morning of childhood shall be bright, that the noon of young manhood shall be useful, and that the evening of old age shall be peaceful and satisfying.

JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE

*CHESTER G. VERNER AND WILLIAM G. HALL.

FROM CHESTER G. VERNER.

ACCOMPLICE.

Moynahan v. People, Colo. 167 Pac. 1175.

An "accomplice" includes in its meaning all persons who have been concerned in the commission of a crime; hence in a prosecution for knowingly buying stolen ores the thief, though his theft was disassociated from the offense of knowingly buying ores with which accused was charged, is an accomplice of accused. Garrigues, J., dissenting.

ASSAULT AND BATTERY.

State v. Langford, Dela. 102 Atl. 63. *Consent.*

A wife in confiding her person to her husband does not consent to cruel treatment or infectious diseases, and a husband, knowing that he had syphilis, an infectious disease, and concealing the fact from his wife, communicates the infection to her, is guilty of an assault and battery; the intent to communicate the disease being inferred from the actual result.

State v. Cancelmo, Ore. 168 Pac. 721. *Specific intent.*

In shooting his automatic pistol at a retreating automobile filled with people, one of whom was hit, defendant committed an assault with a dangerous weapon, though he did not have the specific intent to injure the particular person wounded.

CONSTITUTIONAL LAW.

State v. Barela, N. Mex. 168 Pac. 545. *Self-incrimination.*

Evidence of the correspondence of tracks of defendants, made by them under compulsion of the sheriff, with those found at the scene of the alleged crime of arson and leading therefrom, and evidence of the fitting of the shoes of defendants, taken from them by the sheriff, into tracks found at the scene of the crime, is not inadmissible, as violative of the constitutional guaranty against compulsory self-incrimination. The privilege protects a person from any disclosure sought by legal process against him as a witness. The fact that evidence is the result of an unlawful search of seizure, or is obtained by force or intimidation by private persons or officers, when not under sanction of judicial process, ordinarily has no effect whatever upon its admissibility.

INFANTS.

State v. Vineyard, W. Va. 93 S. E. 1034. *Capacity to commit crime.*

In an indictment for murder against an infant under fourteen years of age it is not necessary to negative the presumption of incapacity of the defendant to commit the crime charged against him.

But an instruction in such a case telling the jury that when the homicide is proved it is presumptively murder in the second degree, and if the state would elevate it to first degree murder the burden is upon it, and if the defendant would reduce the degree of the offense the burden is on him, constitutes reversible error. The law casts no such burden on an infant under the age of fourteen years, who is presumptively doli incapax.

And it is error for the court in such a case to tell the jury that if the defendant at the time of the homicide "had sufficient understanding as to know that the commission of that offense was wrong," the same law was applicable to him as to persons over the age of fourteen years. To convict an infant in such case it is necessary to show also that he knew or understood the nature and consequences of his act and showed design and malice in its execution.

LARCENY.

Ex parte Clark, Calif., D. C. A., 34 Dist., 167 Pac. 1143.

"The evidence taken before the magistrate discloses that the case involves the oft-told story of a bucolic and guileless individual, who, while awaiting for a train at the Sacramento railroad station to convey him to his home in a northern town, after a brief sojourn in the central portion of the state, accommodately handed over to a brace of oily-tongued strangers \$120 of his available cash, as a loan, after the latter had insidiously crept into and gained his confidence and were suddenly awakened to a realization that the freightage on certain freight, which they represented that one of them had previously put on board of a freight train, had to be prepaid, and that they were without sufficient funds to pay the bill, exhibiting to the aforesaid guileless gentleman, as evidence of their 'good faith,' a document purporting to be a draft on an eastern bank for a sum greatly in excess of the amount necessary for their purpose." (Quoted from opinion of court.)

Held: Where confidence men procure money upon the pretext that it is a loan, with the intent to steal the same, the crime is larceny, the owner of the money not having parted with the title thereto.

PAROLE.

State v. Ausplund, Ore. 167 Pac. 1019. *Discretion of court.*

Under Laws 1911, p. 152, providing that, when any person who has not previously been convicted of a felony shall be convicted of a felony or misdemeanor and sentence not to exceed 10 years' imprisonment in the penitentiary shall have been pronounced, the court may, in its discretion, parole the defendant under certain conditions, the matter is left entirely to the discretion of the presiding judge, and there was no abuse or discretion in refusing to parole a defendant given an indeterminate sentence of from 1 to 15 years for manslaughter committed in producing an abortion, though the jury included a recommendation of leniency in their verdict, and though nine of them made affidavit that they would not have agreed to the verdict if they had known the court would not parole defendant.

SODOMY.

Ex parte De Ford, Okla. 168 Pac. 58. *Nature of offense.*

Sec. 2444, Rev. Laws 1910, providing: "Any person who is guilty of the detestable and abominable crime against nature, committed with mankind or with a beast, is punishable," etc., includes copulation between human beings per os as well as per anum.

Comer v. State, Ga. 94 S. E. 314. *Nature of the offense under Georgia statute.*

Pen. Code, sec. 373, reads as follows: "Sodomy is the carnal knowledge and connection against the order of nature, by man with man, or in the same unnatural manner with woman." In this section the words "the same unnatural manner" refer to the words "against the order of nature" and should be so

construed. Sexual intercourse by the use of the sexual organ of the female and the mouth and tongue of the male is as much "against the order of nature," and therefore as fully covered by the statute, as where the sexual intercourse is consummated by the use of the sexual organ of the male and the mouth of the female, or as where the unnatural connection is accomplished by the introduction of the sexual organ of one male into the mouth of another male. It is too narrow a construction to hold that the words "the same unnatural manner" limit the connection against the order of nature to cases where the connection is consummated in some manner by the use of the sexual organ of the male. Bloodworth, J., dissenting.

TRIAL.

State v. Comisford, Nev. 168 Pac. 287. *Argument of counsel.*

Remarks of prosecuting attorney in argument alluding to rumors being prevalent that the jury, because of personal association and friendships, would not have the courage to send accused to the penitentiary, were reversible error.

"The office of district attorney is one of great power and responsibility. It may often happen that he is called upon to protect the rights of an accused person from the possibility of a conviction based upon public sentiment rather than the actual facts of the case. When a prosecuting officer seeks to take advantage of public sentiment to gain an unjust conviction, or seeks to take an unfair advantage in the introduction of evidence, or in any other respect, he is failing in his duty as the state's representative."

People v. Billings, Calif. 168 Pac. 396. *Argument of counsel.*

In prosecution for murder by setting a bomb, it was not misconduct for the district attorney to compare defendant's conduct while testifying to that of a hyena, and describe it as the cowardliest and most disliked animal in the world.

Error assigned to the statement of the district attorney that "it was easy to see why accused objected to the state's showing the nature of a previous conviction," was waived by failure to assign it as misconduct in the trial court.

People v. De Angelli, Calif. 168 Pac. 699. *Misconduct of Prosecutor.*

In a trial for murder, the prosecutor's repeated statements that defendant was able to testify without an interpreter, made to induce the court to change its ruling that his testimony should be given through an interpreter, were not prejudicial, especially in view of the fact that if such statements were made without sufficient cause, and with an improper motive, it would operate more to defendant's benefit than to his prejudice.

THEATRES AND SHOWS.

City of Seattle v. Smythe, Wash., 166 Pac. 1150. *Showing indecent picture which has been approved by censorship board.*

Seattle ordinance, sec. 1, provides that it shall be unlawful for any person to display "any picture of an obscene and immoral nature or wherein any scene of violence is shown or presented in a gruesome manner or detail or in a revolting manner or which tends to corrupt morals," etc. Section 2 creates an advisory committee to aid in the prevention of violations of the ordinance. Section 3 makes it unlawful to exhibit any picture not approved by the national board of censorship or by the advisory committee, provided for by section 2. *Held*, that it constituted no defense to a prosecution under the ordinance that the picture displayed had been approved by the advisory committee appointed under the ordinance if in fact the picture was of a character prohibited by the ordinance.

NOTES AND ABSTRACTS

PSYCHOLOGY—LEGAL-MEDICINE

American Association of Clinical Psychologists.—The American Association of Clinical Psychologists was organized on the evening of December 28, 1917, at Pittsburgh, Pa. According to the Constitution tentatively adopted, pending the next annual meeting, the objects of the Association shall be:

1. To promote a mutual understanding and an esprit de corps among those working in the field of clinical psychology.
2. To aid in the establishment of definite standards of fitness for work in clinical psychology.
3. To standardize and improve mental examination methods.
4. To encourage research and the suitable publication of the results of research.

To be eligible for membership in this Association, a psychologist must, as a minimum requirement,

(1) Hold the Ph. D. degree in psychology (or in educational psychology), or its equivalent, and must, in addition,

(2) Have published, or prepared for publication, a contribution of value to the literature of clinical methods or psychological tests, or

(3) Have had practical experience in psychological examination, including at least 200 hours of actual practice.

From the numbers of those accepting will be appointed, by the temporary chairman, Dr. J. E. W. Wallin, a Committee on Final Draft of Constitution, and a Committee on Nomination of Officers. There will be no dues for the current year. The Committee on Constitution will formulate a plan for dues, to be voted upon as an article of the Constitution, at the next annual meeting.

California Mental Hygiene Society.—The activities of the California Society for Mental Hygiene are shown by the following committees, which are now energetically at work:

I. Committee on Public Meetings.

II. Committee on Mental Hygiene in National Defense.

This committee is at present engaged in trying to segregate feeble-minded girls who will be a menace if allowed to be at large in the neighborhood of the military camps.

III. Committee on the Commitment of the Insane.

Insane persons are actually sick. Why treat them as murderers and thieves before commitment to state hospitals?

IV. Committee on the Establishment of a State Psychopathic Hospital.

This committee is working for the establishment of a state hospital for the first care and observation of mental patients and the treatment of acute and immediately curable mental diseases.

V. Committee on the Study and Vocational Placement of Normal, Sub-normal and Super-normal Children.

Mental tests of children to determine those who are mental defectives; the cause of the poor work of those who are normal, but are retarded in their

school work; and to eliminate the waste of school time by the super-normal child. To make an investigation of the heredity, the neighborhood, and family conditions of those doing unsatisfactory work in school. To study and investigate the desirability of sterilization of sub-normal children working outside of institutions.

VI. Committee on the Advancement of the Medico-psychological Examination of Adult and Juvenile Delinquents and their Care and Treatment.

In view of the large per cent of feeble-minded and psychopathic persons found in prisons and reformatories among both juvenile and adults, it will be at once evident that those arrested in California should have such a medical and psychological examination, as is now being given in some eastern cities, before final commitment.

VII. Committee on the Establishment of County Branches of the California Society for Mental Hygiene.

This committee is working to establish affiliated branches in order to further the cause of mental hygiene in the state.

"Affiliated members: Any society or institution contributing not less than Five Dollars (\$5.00) annually to the Society shall be an affiliated member, its president having a vote."

VIII. Committee on the After-care of the Insane.

There are many patients who leave the state hospitals and go into the world without relatives or friends to care for them, or to provide proper employment in a safe environment.

IX. Committee on Mental Hygiene Clinics.

We certainly need to meet the mentally sick half way, as they have done, for example, in New York and Connecticut. To wait until these unfortunates get to an insane hospital makes the cure less probable and the process longer and more expensive.

X. Committee on Publicity.

XI. Proposed; A Committee on the Care and Treatment of Alcohol and Drug Users.—From August Vollmer, Chief of Police, Berkeley, Cal.

American Psychological Association's Activities in War Time.—Some of the work being undertaken by the American Psychological Association under the advice of the National Research Council shows the wide scope of the work of this committee, as:

- a. The psychological examination of recruits;
- b. The selection of men for tasks requiring special skill;
- c. The psychological problems of aviation, including examination of aviation recruits;
- d. The psychological problems of incapacity, especially those of shock, re-education and vocational training;
- e. The psychological problems of recreation in the army and navy;
- f. The psychological problems of military training and discipline;
- g. The problems of motivation in connection with military service;
- h. The problems of emotional stability, fear and self-control;
- i. The encouragement of neurological and psychiatric examination of U. S. T. C. members.

COURTS—LAWS

For the Employment of Convict Labor in Manufacture of War Supplies (65th Congress, 2nd Session; Senate Bill 3076. Introduced Dec. 4,

1917, by Senator Smith of Georgia).—To employ convict labor for the production of war supplies and to authorize their purchase by the Federal Government; to regulate the compensation and hours of labor and fix standards; to prohibit the purchase of war supplies manufactured by convicts under private contract; to limit the effect of interstate commerce between the state in goods, wares, and merchandise wholly or in part manufactured, mined, or produced by convict labor or in any prison or reformatory; and to equip the United States Penitentiary at Atlanta, Georgia; Leavenworth, Kansas; and McNeill Island, Washington; and the United States Army Prison and Disciplinary Barracks, and the United States Naval Prison, for the manufacture of supplies for the use of the Government, for the compensation of the prisoners for their labor, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That when an emergency exists or when war is imminent, creating a demand for supplies which cannot easily be produced or supplied by privately owned or conducted factories not employing convict labor, the purchasing agents for the departments or bureaus charged with the buying of war or governmental supplies are hereby empowered, subject to the approval of the President, in addition to any method of purchase or procurement now authorized, to place an order for such supplies with the superintendent or other head of any federal, naval, military, state, county, or municipal governmental penal institution willing to undertake the manufacture, production, and delivery of such supplies.

The compensation to be paid for such supplies shall be fair and just, and shall, so far as possible, be the prevailing price for like commodities in the vicinity of the institution furnishing them. Compensation and hours of labor for inmates of federal, naval, military, District of Columbia, state, county, and municipal governmental institutions performing work shall be based upon the standard hours and wages prevailing in the vicinity in which the institution is located. The pro rata cost of maintaining the prisoner should be deducted from his compensation. The supplies manufactured by such institutions shall conform to the standards established by the bureau or department requiring said supplies.

SEC. 2. That the purchasing agents for the departments and bureaus charged with buying the material for the manufacture of war supplies for the United States Government shall not negotiate for the supplying of such materials with any private person or persons or companies using the labor of persons convicted of crime and incarcerated in a penal or correctional institution, nor shall the purchasing agent and departments charged with the buying of war or governmental supplies purchase the same from such persons or companies: *Provided*, That all goods, wares, and merchandise manufactured, produced, or mined wholly or in part by convict labor, except paroled convicts, or in any prison or reformatory, transported into any state or territory of the United States or remaining therein for use, consumption, sale, or storage, except those disposed of by sale to the Federal Government, as above provided for, shall, upon arrival and delivery in such state or territory, be subject to the operation and effect of the laws of such state or territory to the same extent and in the same manner as though such goods, wares, and merchandise had been manufactured, produced, or mined in such state or territory, and shall

not be exempt therefrom by reason of being introduced in the original package or otherwise.

SEC. 3. That the Secretary of War is authorized and directed, in his discretion, to establish, equip, maintain, and operate in the United States Army Prison and Disciplinary Barracks or its branches a factory or factories for the manufacture of equipment or supplies for the United States Government; that the Secretary of War is further authorized to employ the prisoners in the United States Army Prison and Disciplinary Barracks or its branches in the construction of military roads and highways and to make agreements for the use of the necessary machinery and the finding of available material and to supervise the work of county and state highway officials who may be charged with the development of the proposed roads: *And provided further*, That the Secretary of War be, and he hereby is, authorized to cause to be paid to the military prisoners compensation in accordance with section one and such rules and regulations as he may prescribe.

SEC. 4. That the Secretary of the Navy is authorized, in his discretion, to establish, equip, maintain, and operate in the United States naval prisons a factory or factories for the manufacture of equipment and supplies for the United States Government. All expenditures in connection with erecting and equipping such factories, and providing sufficient working capital therefor, shall be charged in "general account, navy." The output of all factories shall be disposed of at current market prices, as determined by the Secretary of the Navy, or his authorized agent, and the proceeds of such sale shall be deposited in the Treasury to the credit of a fund to be known as the "navy prison fund." Annually a percentage to be determined by the Secretary of the Navy shall be transferred on the books of the Treasury Department from the credit of the navy prison fund to the credit of "general account of advances, navy," until "general account of advances, navy," shall have been reimbursed for all advances charged to it on account of navy prison factories. The expenses of operating and maintaining the aforesaid factory or factories shall be charged to the said navy prison fund: *Provided*, That any other expenses in connection with navy prisons and prisoners may, in the discretion of the Secretary of the Navy, be charged to the navy prison fund whenever sufficient moneys therefor are available in said fund: *Provided further*, That the Secretary of the Navy be, and he hereby is, authorized to employ naval prisoners in the construction of military roads and highways and to make agreements for the use of the necessary machinery and the finding of available material and to supervise county and state highway officials who may be charged with the development of roads and highways. All funds received on account of such work shall be credited to the navy prison fund: *And provided further*, That the Secretary of the Navy be, and he is hereby, authorized to cause to be paid to naval prisoners compensation in accordance with section one, under such rules and regulations as he may prescribe, such compensation to be charged against the navy prison fund.

SEC. 5. That the Attorney General of the United States is authorized and directed to establish, equip, maintain, and operate at the United State Penitentiary, Atlanta, Georgia, a factory or factories for the weaving of textiles and mail sacks and other similar mail-carrying equipment for the use of the United States Government; and at the United States Penitentiary, Leavenworth,

Kansas, a factory or factories for the manufacture of furniture and office equipment for the use of the United States Government, and at the United States Penitentiary, McNeill Island, Washington, a pulp and paper mill for the manufacture of print and other kinds of paper for the use of the United States Government. The factories shall not be so operated as to abolish any existing Government workshop or curtail the production within its present limits of any such Government workshop.

SEC. 6. That from and after July 1, 1919, articles so manufactured shall not be purchased from any source other than governmental for the United States Government or any department, bureau, or other agency thereof, unless the Attorney General or his authorized agent shall certify that the same cannot be furnished by such prison factory or factories, unless otherwise provided by law, and no claim shall be audited or paid without such certificate.

SEC. 7. That articles so manufactured shall be sold at the current market prices, as determined by the Attorney General or his authorized agent, and all moneys or reimbursements received from such sales shall be deposited to the credit of the respective working capital fund created by this act.

SEC. 8. That the Attorney General is authorized and empowered to provide for the payment to the inmates of such penitentiaries such pecuniary earnings, in accordance with section one, under such rules and regulations as he may prescribe. Such earnings shall be paid out of the working capital of the penitentiary in which prisoner is confined.

SEC. 9. That there is created for each United States Penitentiary at Atlanta, Georgia; Leavenworth, Kansas; and at McNeill Island, Washington, a fund to be known as the working capital, which fund shall be available for carrying on the industrial enterprises authorized herein, or which may be authorized hereafter by law to be carried on in said penitentiaries. The receipts from the sale of products or by-products of the said industries and the sale of condemned machinery or equipment shall be credited to the respective working capital funds and shall be available for appropriations by Congress annually for the purpose set forth in this act.

SEC. 10. That the said working capitals shall be disbursed under the direction of the Attorney General and shall be available for the purchase, repair, or replacement of machinery or equipment in order at least to maintain the efficiency of the plant, for the purpose of raw material or parts, for the employment of necessary civilian officers and employees at the penitentiary and in Washington, and for the repair and maintenance of buildings and equipment, and for all other necessary expenses in carrying out the provisions of this act.

SEC. 11. That the products of said industries shall not be disposed of except as provided in this act.

SEC. 12. That all laws and parts of laws to the extent that they are in conflict with this act are repealed.

SEC. 13. That whoever shall order, purchase, or cause convict-made goods to be transported in interstate commerce in contravention of the provisions of this law shall be fined not more than \$1,000, or imprisoned for not more than six months, or both, or for any subsequent offense shall be imprisoned for not more than one year.

SEC. 14: That this act shall take effect immediately.

Traffic Court Report.—The first report of the Traffic Court of New York City has just been issued. The report covers that part of the year 1916, after June 14th, the date on which the court was established.

The Traffic Court is established in accordance with an amendment to the Inferior Courts Act of the City of New York permitting the establishment of special courts. This amendment was fathered by the Committee on Criminal Courts. The court has jurisdiction over violations of the State Highway Law, the Speed Ordinance and violation of other traffic ordinances and regulations.

There was an average of 53 cases per day in the 139 sessions that the court held. The total number of persons arraigned was 7,365. All were arraigned on summons excepting 225 who were summarily arrested and 15 who were brought in on warrants issued by the court, which shows clearly the value of the use of the summons. Six thousand four hundred and fifty-one, or 87.6 per cent, pleaded guilty. Of the 885 pleading not guilty, 216 were acquitted. Twenty-nine cases were pending December 31.

Ninety-seven per cent. of all arraigned were convicted. Sentence was suspended on 40 persons convicted, six-tenths of one per cent. of the entire number convicted. One hundred and seventeen were given prison sentences, the remainder comprising 97.7% of convictions, were fined.

The registration numbers of 4 owners of motor vehicles were suspended and the licences of 6 chauffeurs were revoked for operating motor vehicles while intoxicated. Of the 3,285 violations of the speed ordinance, 201 were second offenders and 24 were third offenders.

The court collected \$103,609 in fines. Six thousand nine hundred and seven persons were fined. Of this number, 6,128 paid their fines in court, 485 paid their fines after commitment, and 294 served sentences in default of payment of fines.

The report shows that the largest number of speed violations were on 5th Avenue and Riverside Drive.

In the appendix of the report will be found the laws and ordinances regulating speed and traffic of the City of New York. The report also gives the history of the speed ordinance. The court is presided over by City Magistrate Frederick B. House.—George E. Everson, New York City.

The Public Defender.—The growth of the Public Defender idea during the past few years throughout the United States is significant of the general awakening to the necessity of affording a "square deal" in the criminal courts to all classes of accused persons.

By legislative enactment or local provision, the office of Public Defender has been established in Los Angeles, Portland (Ore.), Omaha, Pittsburgh, Minneapolis, Norfolk, Atlanta, Hartford, Bridgeport, Columbus (O.), Houston, Evansville, Denver and Wilmington (N. C.).

Public Defender Bills are pending or will be introduced in numerous state legislatures, and vigorous movements supported by leading citizens have been launched in many of our large cities looking towards the creation of this new office.

In New York City, "The Voluntary Defenders' Committee," organized and financed by a group of public-spirited individuals, is furnishing paid counsel to indigents accused of crime. While this plan is fundamentally unsound, in that it substitutes charity for justice—and is a private instead of a public function—

it is an eloquent tribute to the force of the Public Defender sentiment and is unquestionably a step in the evolution towards public defense.

All of these various activities prove conclusively that the time is past when the Public Defender movement can be regarded as the hobby of so-called "sentimental reformers." Modern society is recognizing the fact—as did many older civilizations—that accused persons are legally entitled to a proper and adequate defense. The state must safeguard innocence as well as punish guilt. Otherwise our highly prized "presumption of innocence" is a meaningless phrase.

The rapidly increasing sentiment for a real "equality before the law" cannot be ignored. The Public Defender idea is sanctioned by precedent and experience in this and other countries. It is justified both from the standpoint of efficiency and economy. A proper and just administration of the criminal law requires the adoption universally of this essentially humane proposal. An enlightened and progressive public will demand the same rights for the poor man accused of crime as are given to those more fortunately situated.—Mayer C. Goldman of the New York City Bar.

PAROLE—PROBATION

Adult Probation: Ten Years' Experience in Indiana.—Ten years' statistics on the operation of the probation law are now available, the law having been in force since April 1, 1907.

Judges of the several circuit and criminal courts are authorized by this law to suspend the sentence of persons convicted of felony or misdemeanor, or who have pleaded guilty to such a charge, except for the crimes of murder, arson, rape, treason and kidnapping. The statute is based on the assumption that it is possible to reclaim many law-breakers without fixing upon them the stigma of prison life.

So far as this law applies to misdemeanants, there are no available statistics of results. When the sentence is to one of the state prisons or the reformatory, however, the probationed offender is thereafter in the legal custody and control of the institution to which he would have been sent, and is subject to the rules and regulations governing paroled prisoners, including supervision by its parole officers. Of this class the institutions named keep accurate records.

In the ten years the law has been in operation sentence was suspended in the case of 2,104 men and 59 women, 662 of whom otherwise would have had to go to the state prison, 1,442 to the reformatory, and 59 to the woman's prison, a total of 2,163. The law provides that if these persons on probation violate their probation, the original sentence shall be carried out. This was done in the case of 267 prisoners, while 406 others who were delinquent had not been apprehended up to the close of the fiscal year. These 673 constituted 31.1 per cent of the whole number placed on probation. The percentage of violations reported from the different institutions was as follows: The state prison, 25.52; the reformatory, 33.76; the woman's prison, 30.57. Of the remaining 1,490, 15 died, 204 were under supervision April 1, 1917, 1,266 had been discharged, and 5 had been pardoned by the Governor.

The reports from the state prison show that of the 662 whose sentence to that institution had been suspended, 70 were reporting at the close of the year, 4 had died and 419 had been discharged. There were 169 delinquents, of whom 75 were apprehended and taken to prison.

The reformatory reports 1,442 men placed under its supervision, 129 of

whom were reporting at the close of the year, 7 had died, 815 had been discharged and 486 were delinquent. One hundred and eighty-three of these delinquent men had been sent to the reformatory.

From the woman's prison the reports indicate 59 women under supervision, of whom 5 were reporting at the close of the year, 32 had been discharged and 18 were delinquent, 9 of the latter having been taken to prison.

Operations of Suspended Sentence Lay April 1, 1907, to April 1, 1917.

	State Prison	Reform- atory	Woman's Prison	Total
Discharged	419	815	32	1,266
Pardoned by Governor.....	..	5	..	5
Committed for violation.....	75	183	9	267
Delinquent	94	303	9	406
Died	4	7	4	15
Awaiting employment .....	..	..	..	..
Reporting	70	129	5	204
Total	662	1,442	59	2,163
Percentage of violations.....	25.6	33.7	30.5	31.1

AMOS W. BUTLER,

Secy., Commission on Charities and Correction, Indianapolis.

Examination for Chief Probation Officer in the Juvenile Court of Cook County, Illinois.—On January 22, 1918, the written portion of a competitive examination of candidates for the office of Chief Juvenile Probation Officer for Cook County, Illinois, was held in Chicago. This office does not come under the provisions of the Civil Service Law in that state. The Circuit Court judges in the county, one of whom is the Juvenile Court judge, are authorized by law to make the appointment. When Mr. Joel Hunter recently resigned as Chief Probation Officer the judges followed a precedent that had been set several years ago when Mr. Hunter began his eminently successful career; they agreed to leave it in the hands of the Juvenile Court Judge, the Hon. Victor P. Arnold, to make the appointment in whatsoever manner he himself might choose. Judge Arnold thereupon invited a group of citizens of the county to constitute a committee to hold an examination after the manner of a civil service commission. This committee was given full authority by the judge to fix a time for the proposed examination, to advertise it and to proceed in all matters according to their own judgment. He, on his part, said that he would appoint whomsoever the committee should place at the head of the list.

The following are the names of the members of the committee who conducted the examination:

Robert H. Gault, Northwestern University.

Amelia Sears, Civic Director, Woman's City Club, Chicago.

Dr. Herman M. Adler, Director of the Juvenile Psychopathic Institute, Chicago, and Criminologist for the State of Illinois.

Each of these committeemen by previous agreement prepared a list of questions independently in advance of the written examination, and on the morning of the 22nd they selected from the three groups the questions as printed below, which were adopted for the written examination.

The papers were read by each committeeman. The answer to each suc-

cessive question was read in all the papers before passing on to the next. Each reader kept his own private grade on the scale of 100 for each answer. Occasionally they stopped to compare records and to re-read only in those cases in which there was a wide variation in judgment. These cases were surprisingly rare. The judgments of the three readers were almost parallel throughout and the simple average of their reports furnished the final grade on the written portion of the examination.

The committee read the experience papers of only those who had made 60 points or more in the written examination. Up to this point the identity of the contestants was completely hidden from the committee.

There were twenty-nine contestants. Of these, six made sixty or more points in the written part. Their experience papers were read and scored by the members of the committee independently according to the scheme of weights printed below, and on January 26 they appeared for oral examination. In this portion of the test the examiners sought to evaluate the candidate's mental alertness, accuracy in statement, breadth of vision, maturity, emotional control and force. Some of these qualities, of course, had already been indicated in the written examination.

From the beginning of the written work to the end of the oral examination the test was, in the judgment of the committee, very exacting. All who attempted to meet it deserve commendation and the six who came through to the end have accomplished something that is worthy in high measure.

The following named persons were certified to Judge Arnold in the order of their standing:

Wilfrid S. Reynolds, Superintendent Illinois Children's Home and Aid Society.

Joseph L. Moss, Acting Chief Juvenile Probation Officer in Cook County, Illinois.

George B. Masslich, School Principal, Chicago.

Helen M. Jewell, Assistant Juvenile Probation Officer, Cook County, Illinois.

Irene Kavin, Assistant Juvenile Probation Officer, Cook County, Illinois.

A. E. Webster, Assistant Superintendent Juvenile Protective Association, Chicago.

Mr. Reynolds has been tendered the appointment and he is expected soon to make his decision known.

Following is the list of questions that were used in the examination and the scheme of credits allowed for experience and education:

FIRST PART—EXPERIENCE AND EDUCATION

1. Are you a citizen of the United States?
2. What is the date, day, month and year of your birth?
3. Are you married?
4. Are you in good health?
5. Have you any defects in sight, hearing, speech or limb, or any other physical infirmity? If so, what is its nature?
6. Were you ever discharged from the service of any town, city, county, park, district, or state, or from the federal service under a Civil Service Law? If so, when and where and for what reason?
7. Are you employed at present and, if so, in what capacity? Give names of employer.

8. Describe in detail your employment during the last ten years. Give length of service and salary in each case. Give the name and addresses of your successive employers or supervisors in office.
9. State what experience or special training you have had which you believe has fitted you for this position and give briefly the amount and nature of such experience or special training, with names of employers.
10. Where and when did you attend high school or equivalent?
11. What was the nature of your course? (Scientific, or what not.)
12. What schools above high school grade have you attended? When and for how long a period?
13. What academic degrees, if any, have you received?
14. If you left any school before completing your course, give reason therefor.
15. In what studies did you do your best work?
16. Have you made any contribution to professional literature? If so, give titles, dates, and place of publication.
17. What special lecture courses have you given, if any? Where and when?

SECOND PART

- 1—State the enlightened features of child care in other progressive states by which the practice in Illinois might profit.
- 2—(a) Describe what in your opinion would be an ideal organization and management of a Juvenile Detention Home.
(b) State specifically how far this ideal can be met in Chicago.
- 3—(a) Outline a plan by which the maximum of effective co-operation may be secured between a city board of education and the juvenile court.
(b) What special facilities does the City of Chicago offer in this direction?
(c) Cite any experimental evidence with which you are familiar that bears in any way upon the relationship of education and delinquency.
- 4—(a) State what reports you would require from the Probation Officers serving under you.
(b) How would you verify these reports?
(c) How would you estimate the relative efficiency of your officers?
- 5—(a) On January 22, 1916, Leon Trotsky was committed as a dependent child by the Juvenile Court of _____ County to a manual training school. Today, January 22, 1918, he is just 6 years old. The superintendent of the school asks you, as chief probation officer, to have an investigation made to determine if any other plan is possible for the child. The superintendent states that no one has visited Leon since his commitment two years ago, and Leon can give no information concerning his father or relatives whatsoever. The Juvenile Court of _____ has the following record: "Jan. 22, 1916, Mr. Ivan Trotsky, in court, stated his wife died two years ago (1914); that he has a younger son, Ivan, who is cared for by an aunt. He, himself, just out of the hospital and cannot support this boy. Boy committed to manual training school."

What clues are contained in the above?

Develop the steps of the investigation in detail.

- (b) Recite minutely the instructions you would give an inexperienced officer to aid him in conducting an investigation in the following:

Miss Brown, teacher in _____ school, reports that Mary Leopold entered the school on transfer from Detroit, Michigan, a few months ago. At first she seemed a normal little girl, but latterly she has been difficult to control, comes to school late, and in an unkempt condition, is listless and indifferent about her work, and appears constantly unhappy. The teacher talked with the mother, but got no satisfaction. She states that she understands Mary has a stepfather.

- (c) The Infant Welfare nurse is discouraged over the following situation, and comes to the Probation Department for assistance.

What action should be taken?

Baby Duncan, age 18 months, is in a precarious condition because of improper feeding. His mother died a few months ago. His father works and pays his own and the baby's board to the grandmother, with whom they live. The grandmother takes great pains in her care of the baby, but is worried because she cannot procure the diet prescribed by the physician and nurse. She states the father will not provide the additional money necessary though she has asked him to do so repeatedly.

- (d) Discuss the following:

A girl of 16 is apprehended by the police for stealing a silk waist valued at \$15.00 and a pair of baby shoes valued at \$1.25. The police know the family and report that the father was a drunkard who disappeared four years previously. The mother is working in a laundry. There are four younger children, aged 14, 12, 8 and 6. No previous delinquency reported for the oldest girl, who denied having taken the articles, but later told the police that she had also taken a silver mesh bag valued at \$25.00, and had given it to a neighbor whom she didn't know well, but liked, "because she said, 'Good morning' to her with a pleasant smile."

- 6—(a) Discuss the following cases:

- (a) Four boys, not related, were apprehended by the police for stealing rubber shoes valued at \$150.00 from a box car on the railroad. One boy, 15 years, two are 13 years, and one is 12 years old. The oldest has been in court twice before on a similar charge. The 12-year-old boy was in court five years before, because the father has deserted and the mother was given a pension.
- (b) A girl, aged 16, foreign birth, is found by a representative of the Associated Charities, living with her mother, who speaks no English and keeps a rooming house for laborers. The home consists of three rooms. There are seven boarders. The girl gives an account of immoral relations with two of the boarders. She has had two years of school, leaving the fifth grade at the age of 14. One of the boarders involved desires to marry the girl.
- (c) A family consisting of parents and five children is found by the police living in a abandoned shack, containing one room. The father is alcoholic and has no regular employment. The mother goes out to scrub. The children are aged 11, 9, 5 and 4, respectively. The

- oldest child, a boy, has been absent without excuse from school for three months. He is in the third grade. The second child, a girl, is in the second grade.
- 7—(a) Write a historical note on the development of Juvenile Court legislation in the United States.
 - (b) What seems to you to be the fundamental principles underlying this legislation?
 - (c) How, in your judgment, should these principles affect future legislation in this or other states?
 - 8—Outline what seems to you to be a workable plan for the centralization of private philanthropic welfare agencies in a city like Chicago.
 - 9—Prepare for use in an annual report of the Juvenile Court the framework of a statistical table that will show in the aggregate and proportionately the number of children arraigned in the court either for the first time or with previous court records on the charge of juvenile delinquency, and in the various special proceedings.
 - 10—(a) Enumerate the public and private agencies with which you, as chief probation officer, would expect to co-operate, and on which you would depend for the efficient care of the wards of the court.
 - (b) What functions now performed by private agencies in your judgment should be entrusted to public agencies such as the Juvenile Court?
 - (c) What functions, now performed by the Juvenile Court, should in your judgment be entrusted to other agencies?
 - (d) Defend your answer in each case.

A—DISTRIBUTION OF WEIGHTS FOR EXPERIENCE AND EDUCATION, 100 POINTS

	<i>Points</i>
Maximum of weights for experience.....	60
Experience in all phases of juvenile probation work, maximum aggregating.	60
Experience in all phases of adult probation or parole work, maximum aggregating	36
Experience in all phases of police work, maximum aggregating.....	30
Experience in all phases of case working, social welfare organizations, in addition to the above, maximum aggregating.....	36
Experience in social investigations (surveys, etc.), maximum aggregating..	36
(It is anticipated that candidates will offer experience in the above-named fields in various capacities, such as: Field Officer, Clerical Assistant, Department Head, General Supervisor or Superintendent. Among these types of experience, the total of 60 points that may be gained by experience in Juvenile Probation, for example, will be distributed as follows: Field Officer, maximum 15 points; Clerical Assistant, maximum 15 points; Department Head, maximum 21 points; General Supervisor, Superintendent or Chief, maximum 21 points. For corresponding experience in adult probation or parole work, 6/10 of these weights will be allowed; for corresponding experience in police work, 5/10 of these weights will be allowed; for corresponding experience in other case working, social welfare organizations, 9/10 of these weights will be allowed; for corresponding experience in social investigation surveys, etc., 6/10 of these weights will be allowed.)	

	<i>Points</i>
Experience in the educational profession, public or private grade school teaching, maximum aggregating.....	4
Public or private high school or equivalent, maximum aggregating.....	5
Public or private college, maximum aggregating.....	4
Public or private university, maximum aggregating.....	4
Public or private technical schools, maximum aggregating.....	4
Principalship of such institutions as those named above, maximum aggregating	30
For teaching the principles of social welfare work in a recognized school of civics and philanthropy, or of practical sociology, maximum aggregating	20
Instruction or direction of boys' and girls' activities (including organized play, in parks, playgrounds, gymnasiums, Y. M. C. A., Y. W. C. A., and kindred organizations), maximum aggregating.....	12

B—DISTRIBUTION OF WEIGHTS ALLOWED FOR EDUCATION AND FOR LITERARY PRODUCTION

	<i>Points</i>
Maximum weight for education.....	40
For general education above high school grade:	
College, maximum aggregating	8
Special education, post-graduate university studies in suitable fields, maximum aggregating	8
Schools of civics and philanthropy, or practical sociology, maximum aggregating	20
Schools of theology, maximum aggregating.....	2
Schools of medicine, maximum aggregating.. ..	4
Schools of law, maximum aggregating.....	4
Other professional schools, maximum aggregating.....	2
Foreign languages, maximum aggregating.....	2
Contributions to professional literature (bulletins, reports, professional journals, books and pamphlets), maximum aggregating.....	20

R. H. G.

Twenty Years' Experience Under the Indeterminate Sentence Law.—

Twenty years ago the General Assembly of Indiana enacted an indeterminate sentence and parole law. Somewhat doubtfully received at first, it quickly established itself as an exceedingly important part of the state's correctional system, and no one now would think of returning to the old system of definite sentences. It has been upheld by the Supreme Court, it has the support of public sentiment, and those who have charge of its administration firmly believe in it.

The law applies to men over sixteen years of age and women over eighteen, convicted of felony, with the exception of those found guilty of treason, murder in the first or second degrees, or rape upon a child under twelve years of age, and those convicted of felony for the third time (habitual criminals).

Careful account has been kept of the law's operations. Reports are made every six months to the Board of State Charities by the institutions concerned—the State Prison, Indiana Reformatory and Indiana Woman's Prison. The records show that in the past twenty years 10,933 persons have been released by the parole boards.

The reformatory paroled 6,345 men. Of this number 3,905 having made

good reports for the required length of time after their release, never less than a year, were given their final discharge. In the cases of 299, the maximum of the term for which they were sentenced expired while they were on parole and they were no longer held under supervision. Ninety-five died; 416 were reporting at the close of the fiscal year. This leaves 1,630 to be accounted for. They were the delinquent ones. All of them, constituting 25.68 per cent of the whole number paroled, violated their paroles. The management apprehended 878 of them and returned them to the institution. The remaining 752 delinquents are at large.

Equally interesting statistics are reported from the state prison. Of 4,288 men paroled, 2,530 served their parole period and were discharged; 141 whose terms expired while they were on parole were released from supervision; 67 died; 381 were reporting at the close of the year. The remaining 1,169, or 25.43 per cent, were delinquent. Of these, 790 have been returned to the prison; 379 are at large.

At the woman's prison the parole law did not become operative until 1899. Three hundred women have been released under its provisions. One hundred fifty-nine of these served their parole and were discharged; 26 others were discharged because of the expiration of their sentences during the parole period; 9 died, and 18 were reporting at the close of the year. The delinquents number 88, or 29.33 per cent. Forty-nine of these have been returned to the prison, the other 39 are at large.

Altogether but 2,887 of the 10,933 prisoners paroled, or 26.42 per cent, proved unsatisfactory. It is to be expected that some of these delinquent cases will succeed in their efforts to escape arrest, but it is gratifying to know that the ratio of these to the whole number paroled is small—about one in nine.

A careful record of the earnings and expenses of these paroled prisoners is kept. The reports show an aggregate of \$3,032,622.44 earned, in addition to which many received board, lodging and laundry. Personal expenses amounting to \$2,464,847.69 were reported, leaving a balance on hand of \$567,774.75, an average saving of \$51.93 each. It speaks well for the economic value of the law that these men and women, instead of being maintained in prison at public expense, proved themselves capable of obeying the law and earning their own living.

The Following is the Statement in Detail of the Operation of the Indeterminate Sentence and Parole Law from April 1, 1897, to April 1, 1917.

	State Prison	Reform- atory	Woman's Prison	Total
Number granted discharge.....	2,530	3,905	159	6,594
Number whose sentences expired during parole period.....	141	299	26	466
Number who died while on parole..	67	95	9	171
Number returned for violation.....	790	878	49	1,717
Number delinquent and at large....	379	752	39	1,170
Number reporting	381	416	18	815
Total	4,288	6,345	300	10,933
Percentage of unsatisfactory cases..	25.43	25.68	29.33	26.42

Earnings of prisoners on parole	\$1,210,558.70	\$1,816,121.88	\$5,941.86	\$3,032,622.44
Expense of prisoners on parole	941,855.30	1,519,957.46	3,034.93	2,464,847.69
Balance on hand.....	\$ 268,703.40	\$ 296,164.42	\$2,906.93	\$ 567,774.75

AMOS W. BUTLER, *Indianapolis.*

MISCELLANEOUS

Committees of the Institute Appointed for 1917-1918.

Committee "A"—Insanity and Criminal Responsibility.

Edwin R. Keedy, Chairman, University of Pennsylvania Law School,
3400 Chestnut St., Philadelphia, Pa.

Orrin N. Carter, Justice of the Supreme Court of Illinois, 1022 Court
House, Chicago, Illinois.

Adolph Meyer, Phipps Psychopathic Hospital, John Hopkins Univer-
sity, Baltimore, Md.

William E. Mikell, Dean of University of Pennsylvania Law School,
3400 Chestnut St., Philadelphia, Pa.

Morton Prince, of Tufts Medical School, 458 Beacon St., Boston, Mass.

William A. White, Government Hospital for Insane, Washington, D. C.

Harold N. Moyer, Chicago Medical Society, 105 State St., Chicago, Ill.

Committee "B"—Probation and Suspended Sentence.

Herbert C. Parsons, Chairman, Secretary Commission on Probation,
Boston, Mass.

Arthur W. Towne, Society for Prevention of Cruelty to Children,
105 Schermerhorn St., Brooklyn, New York.

Wilfred Bolster, Municipal Court, Boston, Mass.

Homer Folks, Yonkers, New York.

John W. Houston, Chief Probation Officer, County Building, Chi-
cago, Ill.

James A. Webb, Superior Court, New Haven, Connecticut.

E. Z. Hackney, Probation Officer, Court of Quarter Sessions, Phila-
delphia, Pa.

A. C. Backus, Municipal Court, Milwaukee, Wis.

Committee "C"—Classification and Definition of Crime.

Ernst Freund, Chairman, University of Chicago Law School, Chi-
cago, Ill.

Eugene A. Gilmore, University of Wisconsin Law School, Madi-
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Robert W. Millar, Northwestern University Law School, 31 W. Lake
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Nathan William MacChesney, President Illinois State Bar Associa-
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Samuel K. Dennis, United States District Attorney, Baltimore, Md.

Committee "D"—Modernization of Criminal Procedure.

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Joseph P. Rogers, Court of Common Pleas No. 2, Philadelphia, Pa.

William H. McHenry, Ninth Judicial District Court, Des Moines, Iowa.

E. Ray Stevens, Ninth Judicial Circuit Court, Madison, Wis.

Lawrence Veiller, Secretary of Committee on Criminal Courts of the Charity Organization Society, 105 E. 22nd St., New York City.

Robert J. Wilkins, King's County Children's Court, Brooklyn, N. Y.

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Committee "E"—Crime and Immigration.

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Raymond B. Fosdick, Bureau of Social Hygiene, 61 Broadway, New York City.

Miss Grace Abbot, 920 S. Michigan Ave., Chicago, Ill.

Committee "G"—Drugs and Crime.

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Committee III—Publications.

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Committee on Indeterminate Sentence Release on Parole and Pardon.

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Committee on Criminal Statistics.

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Robert E. Chaddock, Columbia University, New York City, N. Y.
Edith Abbott, School of Civics and Philanthropy, Chicago, Ill.
Miss Annie Hinrichsen, Secretary, Commission on Public Welfare,
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Committee on Teaching of Criminalistics in Universities and Colleges.

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Professor A. J. Todd, University of Minnesota, Minneapolis, Minn.
Dr. H. C. Stevens, University of Chicago, Chicago, Ill.
Professor J. D. Miner, Carnegie Institute of Technology, Pittsburgh, Pa.
Professor Edwin R. Keedy, University of Pennsylvania Law School,
Philadelphia, Pa.
Professor Charles Ellwood, University of Missouri, Columbia, Mo.

Committee on Public Defender.

William Embree, Chairman, 57 Center St., New York City.
Harry E. Smoot, 30 N. La Salle St., Chicago, Ill.
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Robert O. Harris, Tremont Building, Boston, Mass.
Lindley Spender, Baltimore, Md.
Owen J. Roberts, Morris Building, Philadelphia, Pa.

Thirteenth Annual Report, National Child Labor Committee.—Both good and bad records for child welfare legislation were established by the various states in 1916-1917, according to the November Child Labor Bulletin containing the Thirteenth Annual Report of the general secretary of the National Child Labor Committee. Among the states which weakened their laws were four (Connecticut, Massachusetts, New Hampshire and Vermont) which gave to some official or commission the power to relax the child labor law of the state during the war, and two states (New York and California) which authorized a similar relaxation of their compulsory education laws. Among the eleven states which strengthened their child labor laws are Delaware, Illinois, Kansas and Texas where entirely new laws were enacted and Wisconsin which added domestic service to the list of occupations for which work permits are required. Compulsory education laws were improved in six states and mothers' pension laws were enacted for the first time in Arkansas, Delaware, Maine and Texas, and amended in 10 other states, making a total of 34 states which now have mothers' pension laws.

REVIEWS AND CRITICISMS

PROBLEMS OF SUBNORMALITY. By *J. E. Wallace Wallin*, with an introduction by *John W. Withers, Ph.D.* New York, World Book Co., 1917. Pp. xxxii+485.

Because this work of Dr. Wallin is the first attempt to set before the psychological profession comprehensively the many problems confronting the clinical worker, a somewhat lengthy review of "Problems of Subnormality" would appear to be justified. In the preface the author states the four fundamental questions which deserve scientific treatment, viz., the perfecting of differential diagnosis which is in part considered in Chapter I and more completely in Chapter II, under the heading, "Who Is Feeble-minded?"; the problem of differential educational treatment in Chapter III; the matter of after-care and control in Chapters IV, V and VI; and preventive measures in Chapter VII. The material contributed by the author himself is drawn from his own extensive personal experience in the psychological clinics of the University of Pittsburgh and the St. Louis school system.

Throughout this work, the author maintains a rigorously scientific attitude toward the material of his text, though he is sometimes constrained to admit that much discussion possibly was centered about an inconsequential matter (p. 299). If the tendency to scrutinize material painstakingly does sometimes delay the development of the author's thesis, its justification is seen throughout the work, for many of the tacitly accepted standards of retardation indicative of feeble-mindedness are seriously called into question. So, likewise, are data on heredity such as are frequently submitted in so-called scientific surveys.

The appearance of this work will arouse the curiosity of workers in the various fields in which the problem of feeble-mindedness is a present and imperative one. The psychological profession, the profession of law and law-making including criminology; the medical profession, the teaching, and the social sciences will turn to the experience of a co-worker to find support and further direction. The reviewer will accordingly regard this work from the attitude of workers in these various fields.

I. Obviously the primary concern of the psychologist is the art of differential diagnosis. The experience of every clinical worker confirms the author's observation (p. 106) "even the trained and experienced psychologist is frequently baffled by the difficulties of mental diagnosis and completely balked by the present limitations of the science." The cautious clinical worker experiences a distinct disappointment when he reads in another place (p. 107) "Such a specialist (a properly trained examining psychologist) will be able to come to a positive decision from one examination on from 75% to 90% of the cases." The clinical worker then surveys the diagnoses of his masters in this field and finds such classification as "diagnosis deferred;

provisional diagnosis; dull from physical causes; subnormal mentality; retarded through neglect; retarded, borderland; backward, psychotic; constitutional inferior, undetermined," etc. All these together constitute from 25% to 64% of the cases examined according to the authorities consulted. (Author's table, p. 182.) Are such diagnoses to be regarded as positive decisions? The author must recognize the tentative nature of such diagnoses undoubtedly when he states (p. 78) "Moreover, many who were not retarded two years were undoubtedly feeble-minded," and again (p. 79), "Since we have attempted to be cautious in our diagnosis, it is probable that some who were diagnosed as borderline or reserved, and possibly a few diagnosed as backward, will eventually prove to be feeble-minded." Much that appears in the volume touching the matter of diagnosis is of little value to the clinical worker. It is a condemnation of the methods employed by Binet testers (author's term) who will be little perturbed by the author's remarks. Cautious workers have for a considerable period been conservative in establishing an upper limit of feeble-mindedness and in interpreting retardation. Entirely too much space in Chapter II is given to reproducing reports on mental surveys, etc., which have reached almost every clinical workers' hands, and forthwith the waste-basket. It is regrettable that many of them are taken seriously enough to be allotted space in a volume. The profession awaits a report from workers with Dr. Wallins' wide experience on such cases as he and other workers recognize "will eventually prove to be feeble-minded." Herein the volume contributes nothing. If experienced institutional workers can help us in this situation, let us encourage them to report their observations.

In view of diagnoses submitted by the author on his cases and such limitations as he recognizes respecting diagnosis, the reviewer does not feel convinced that we are ready to set aside the observation of Binet and Simon, (p. 107) "that all decisions' with respect to admissions to special schools, 'are to be recognized as provisional; the children are to be admitted to the class for defectives on trial, to be kept under observation.'" Experience in an institution convinces the reviewer that all commitments, especially in view of such limitations as the author himself points out, should be provisional, depending on re-examination at prescribed intervals.

The author's attitude respecting the functions of psychological tests and psychologists is probably due to a weakness in clinical psychological methods which justifies the statement of Yerkes: "Possibly it would be wise wholly to ignore the Binet method, on the assumption that nothing satisfactory exists." This is essentially the attitude of others, namely, Binet, Simon, Witmer, Fernald, Mitchell, Langmead, Huey, Healy, Yerkes, Bridges, and Hardwich, and which is possibly best expressed in "A Point Scale," etc., thus, "the verdict often depends on the judgment of the examiner almost as completely as when no 'scale' is used." It is doubtful if any other science claiming scientific exactness in method would tolerate long so wholly unscientific a method. Let us be frank in this particular. The author states (p. 100) "Feeble-mindedness is a mental defect which can be determined only

by psychological criteria," but when pressed we find that these psychological criteria have only subjective reality. As an example of the application of a method so dependent on subjective factors, cases such as the following diagnosed by a very competent examiner may be cited: "Mary ———, age 13½ years. Mental age 10 1/5 years. The reactions of this individual indicate retardation through neglect of physical handicaps. ——— Examiner." Just what reactions indicate the condition diagnosed we are not told. Can progress in diagnoses be made when the training of the recruits in the profession is under such experts? Psychologists must free themselves of the delusion that their own personal expertness justifies their lack of a truly scientific method.

That the psychology of feeble-mindedness yet remains unwritten is apparent from the following observations of the author (p. 215), "Personally I have been quite dubious of the propriety of attempting to draw an inflexible line at any fixed age, because a degree of mental enfeeblement which might be regarded as feeble-mindedness in one person might possibly, with equal propriety, be regarded only as backwardness or borderlinity in another person. Thus we might be justified, for all practical purposes, in regarding an adult epileptic with an eleven-year mentality as feeble-minded, while we would not be justified in so regarding an eleven-year deficient of the simple type. Moreover, a mental status which we could regard as feeble-mindedness in one environment might only justify a diagnosis of backwardness in another environment." If being justified for all practical purposes determines whether society shall take action or not, one can agree with the author. But in view of the dispute between psychologists as to whether feeble-mindedness is a quantitative or qualitative difference in intelligence, or both, it is difficult to justify the author's contention scientifically.

Psychologists will be interested also in the author's discussion of the Intelligence Quotient. (Chapter II.) The author apparently follows his own bias in his computations of the quotient, employing 16 as a divisor as suggested by Terman in the cases of the poorly schooled subjects (pp. 223-227) and the actual age as divisor in the students group (pp. 228-230).

II. The legal profession will find throughout the volume much exhortation to caution in accepting the findings of surveys on the statewide distribution of feeble-mindedness; and reports on the prevalence of feeble-mindedness among offenders. Suggestions regarding forms of commitment, retention, and care of various *atypical* groups, such as the feeble-minded, epileptic, crippled, blind, including prevention, deaf, speech defective, unstable and psychopathic children, and suggestions on control and elimination of defective children through sterilization touch the legal profession. The above outlined material is contained in Chapter VI. The author presents it as suggestive material, recognizing the present legal limitations.

Of more concern, perhaps, to the legal profession is the author's attitude toward responsibility in criminal action. This matter is discussed with an illustrative case (p. 232 f.), wherein the author asks the

question: "What greater justification would there be for freeing eleven-year criminals from responsibility for their criminal acts than for freeing eleven-year successful farmers, laborers, and merchants from responsibility for their acts, whether legal or illegal?" This question together with his recommendation as to delinquent defectives (p. 399) to the effect that, "no disposition of a questionable juvenile court case (or an adult court case, either) should be made until the facts are known with respect to the individual's mental capacity and responsibility" as well as the appellation "irresponsible" applied to epileptics (p. 405), give evidence of the failure of the author to comprehend the true nature of criminal responsibility. It will be a disappointment to the earnest workers for reform of criminal law and procedure to learn of a psychologist still talking of *responsible and irresponsible persons*.

III. The medical profession will be interested doubtless in the contentions of the author respecting the rôle of the psychologist and physician in the diagnosis and treatment of mental deficiency, sub-normality, backwardness, epilepsy, etc. The author questions the advisability of having the school physician make the initial selection for the special classes. He maintains that the demand for specialization makes it impossible for one person to equip himself equally well in both fields (p. 108).

IV. The educator, especially the administrator, will find in Chapter III a critique of the present organization of work for mentally and pedagogically retarded children. Little is contributed on the methods of differential educational treatment. It is organization that receives attention. The financial management of special classes would undoubtedly be a matter of vital concern to school administrators, but this matter receives no attention. Apparently the only constructive suggestion in this chapter not already much discussed by school men is the suggestion (p. 285) of *after-care* or *after-guidance* in special class cases—a function at present performed in some cities by mental hygiene societies.

V. Various phases of this work bear very intimately on social endeavor, particularly the author's suggestions regarding commitment of the feeble-minded, the epileptic, reporting the blind, deaf, crippled, speech cases, and the unstable and psychopathic, and also the suggestion regarding eugenic measures. Many of these suggestions are intended for the meeting of local needs (Missouri), and are modified by local limitations. However, much of the material has more universal application which will give directing counsel to committees on child and civic welfare.

The work is dedicated to Professor George Trumbull Ladd in commemoration of his seventy-fifth anniversary. An ample bibliography and efficient index close the volume. The volume bespeaks the ardent devotion of the author to his profession and his laborious efforts to give intelligent direction in a young but promising field of scientific endeavor.

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Chicago.

HARRISON L. HARLEY.

THE NEUROTIC CONSTITUTION. By Dr. Alfred Adler. Translated by Bernard Glueck, M.D., and John E. Lind, M.D. Moffat, Yard & Co., New York, 1917.

The field of the neuroses, or the functional nervous troubles, because of the absence of any demonstrated organic pathology, has offered a most fruitful ground for speculation. Within recent years we have witnessed two ambitious attempts to explain the diverse symptomatology of these conditions from the point of view of underlying unitary principles, viz., the Freudian hypothesis, and more recently the doctrine of organ inferiority propounded by Alfred Adler. Both of these attempts to introduce order and system into these confusing conditions are comprehensive and philosophic. Freud distinguishes between the true neuroses and the psycho-neuroses. The basis on which this distinction is founded is a derangement in the past or in the present sexual life of the patient. The psycho-neuroses which include hysteria and obsessions, owe their origin to some psychic trauma which occurred during infancy or early adolescence. The subconscious effects of this trauma persist beneath the surface of conscious life, only to emerge from subconsciousness in hysteric episodes of one sort and another. The true neuroses, on the other hand, are traced to present pathological conditions of the sexual mechanism of the individual, which are directly responsible for the symptoms. In this group belong the anxiety neuroses and neurasthenia. The Freudian conception of the subconscious mechanism with its complexes, repressions and censor has been fully expounded by many disciples. Freud deserves credit for having introduced into pathologic psychology the fruitful concept of the subconscious. It is questionable, however, whether the intricate mechanism by which Freud supposes that the latent content of dreams is transformed into the manifest content will permanently be accepted. It is interesting to observe the enormous overgrowth of hypothesis and theory which has taken place within the space of a few years. Evidence is not lacking that interest in Freudian theories is suffering an eclipse, which to the reviewer is only proof that critical readers must have factual proof. In the nature of the case, no demonstration of a rigorous sort can be furnished for the Freudian hypotheses. The only argument which can be adduced in favor of them is the apparent improvement which follows in some cases upon the catharsis of a psycho-analysis. This evidence, however, is simply the therapeutic proof of the efficacy of a certain remedy. *Post hoc ergo propter hoc*. The patient improves following upon a certain treatment but not necessarily as a result of it. When one considers how slowly and by what hard won battles progress in science is made, one can not help but wonder at the temerity of those authors who produce volumes of elaborate theories upon the basis of no experimentally determined facts.

The absence of proof, other than general plausibility, which is characteristic of the Freudian theories, is thrown into striking relief by the work of Alfred Adler, who has constructed out of whole cloth a detailed and elaborate theory to account for the very same phenomena as are interpreted by Freud. Very few, if any, of Freud's hypotheses and assumptions are made use of by Adler. Where two radically different conceptions of the same phenomena, each minute and detailed

in its account, can be so confidently proposed by their authors, one wonders how many more of equal plausibility might be devised. Any one who hopes for progress in our knowledge of mental and nervous diseases can not but feel how great is the difference between these pretentious constructions, these ambitious attempts to wrest the whole truth from nature by one brilliant thought, and those painstaking, modest contributions to the physical and biological sciences by which knowledge grows from more to more.

Adler traces the neurotic constitution to two fundamental propositions, first the feeling of inferiority which has its ground in actual organic inferiority; and second, psychic compensation for the feeling of inferiority. "On what does the patient base his feeling of inferiority? Inasmuch as the patient is only able to detect the possibility of relationship between disease predispositions and those organ-inferiorities which force themselves upon his attention he is constantly in the path of conjecture. He will for example not seek the reason for his inferiorities in the disturbances of the secretions of the glands, but will blame in a general way his weakness, his stunted growth, his sham education, the small size or anomalies of his genitals, lack of complete virility, his effeminacy, the feminine traits of a physical or psychic nature, his parents, his heredity; at times only lack of love, bad training, deprivations in childhood, etc." In order to make his life tolerable under the handicap of an inferior organ the neurotic builds up a defense against his own sense of inferiority in the form of a psychic structure in which his truncated self is made whole. The chief motive in the development of this psychic construction is "the aim to be great, to be strong, to be a man, to be above." This aspiration to be dominant Adler calls the "masculine protest"; to this he traces the symptomatology of the disease, namely: "The passive, masochistic traits, the effeminate characteristics, the passive homosexuality, impotence, suggestibility, accessibility to and inclination for hypnosis, or, finally, the apparent surrender to effeminacy and to effeminate behavior. The final object, however, always remains the same, the domination over others which is felt and appreciated as a masculine triumph. Neither are the above described compensatory features ever absent in the make-up of these patients, as they might be expected to be in individuals who assume as a ground for action a feeling of inadequacy and who then strive to secure by every possible means a substitute for their shortcomings, to supply that which they feel to be lacking in their exaggerated ego-consciousness. And also in the psychic situation, the sexual element as a symbol asserts itself, inasmuch as such patients frequently form their apperceptions in accordance with a scheme in which their genital organs are regarded as if they were effeminized, restricted, castrated, and as if they were therefore constantly forced to seek a substitute. One form of this substitution they find in the depreciation and emasculation of all other persons. From this tendency to deprive others of worth originates the considerable reinforcements of certain traits of character, which set forth further inclinations and which have the quality of injuring others, as sadism, hate, contentiousness, intolerance, envy, etc." It may be of interest to point out that the frequency of sexual motives in neurotics, is explained on two grounds: "First,

because they furnish a suitable form of expression for the masculine protest; second, because it lies within the option of the patient to feel them as real."

HERMAN C. STEVENS.

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ANNUAL REPORT OF THE CHILDREN'S COURT OF THE CITY OF NEW YORK, 1916. Pp. 252.

The presiding justice of the Children's Court, Franklyn Chase Hoyt, states the purpose of this report as follows: "The purpose of this, our first extensive report, is threefold: First, to outline the history of the Children's Court; second, to tell of its present conditions, and, third, to call attention to some of its immediate needs."

The first Children's Court in New York City was established in and for the County of New York in 1902. Improvements were made in 1910 and 1912, and in 1915 the Act was passed creating the present Children's Court. Pursuant to the provisions of that statute the mayor of New York selected five justices of the Court of Special Sessions to serve in the Children's Court and designated one of them to act as the presiding justice. One justice will retire each year but all succeeding appointments will be for five years. Attention is called to the number of judges in the St. Louis court as shown in another paragraph; the New York system is infinitely better. The composition of the court on January 1, 1917, was as follows:

The Administrative and Clerical Force.	{	The Presiding Justice.
		Four Associate Justices.
		The Chief Clerk.
		Five Clerks of the Court (one in each county).
		Three Deputy Clerks of the Court (one each in New York, Kings and Bronx Counties).
		Two Assistant Court Clerks (one each in New York and Kings Counties).
		Four Clerks.
		Four Court Stenographers.
		One Stenographer and Typist.
		Four Interpreters.
		Thirteen Court Attendants.
The Probation Bureau.	{	Two Telephone Operators (one each for New York and Kings Counties).
		A Secretary to the Presiding Justice.
		The Chief Probation Officer.
		One Deputy Chief Probation Officer (Male).
		One Deputy Chief Probation Officer (Female).
		One Senior Probation Officer.
The Clinic.	{	Fifty-one Probation Officers.
		Four Stenographers.
		Two Clerks.
		Three Physicians.
		One Stenographer.

Even with the above number of officers, in writing of the needs of the court the presiding justice states:

"Although this number may seem fairly large at a glance, a thorough analysis of the situation shows that more are required. The average number of children to each officer for supervision is altogether too large for satisfactory service according to the opinions of the best experts in probation work. Some of our probation officers have over one hundred children under supervision, although to perform real and effective work an officer should not be required to look after more than fifty. But in addition to that fact there must be considered the necessity of lengthening the period of probation so that the best results may be obtained. For example, let us say that our average period of supervision of all cases is six months. Although a supervision of six months or even of a shorter time may suffice in many instances, it is probably that as a general proposition an average supervision period of a year would be preferable."

It is only necessary to read the carefully prepared statistical tables in this report to be fully convinced that Justice Hoyt's contention is correct. A large part of the report is made up of the statistics. They are worthy of the attention of those interested in the children of a large city. The total number of cases handled by the five justices was 12,327 in the one year.

Some of the main recommendations made in the report which are applicable to most communities are:

(1) That there should be a proper differentiation between the children who need institutional care and those who should be placed in family homes. The report emphasizes the need of more private homes for neglected children.

(2) That there should be observation stations where children might be held and studied before the court makes a final commitment.

(3) That there should be graded institutions for the mentally unfit and better facilities of all kinds for dealing with this problem.

(4) That the "Children's Laws" of the state be codified.

(5) That the court be given jurisdiction over children of older years. (The maximum age in New York is 16 years at present.)

(6) That through constitutional amendment chancery or equity powers be conferred on the court so that it might inquire into the facts and circumstances of each case at the first hearing, without first having made a technical finding of juvenile delinquency.

The above are but a few of the recommendations. The whole is an excellent presentation of the work of the New York court and deserves the careful attention of juvenile court judges and probation officers throughout the country.

JOEL D. HUNTER.

Commission on Charities and Correction,
San Francisco.

NEGRO EDUCATION. By *Thomas Jesse Jones*. A Study of the Private and Higher Schools for Colored People in the United States. Bulletins 38 and 38, Bureau of Education Publications, 1916. Vols. I and II. Pp. 423 and 724.

This is the first comprehensive study of negro education in the United States. The need for such a work has been evident for a num-

ber of years. Vol. I undertakes to summarize the educational status of negro education in the United States by analyzing such topics as industrial education, preparation of teachers, secondary education, rural education, funds and their control, public school facilities, buildings and grounds, etc. It gives a cross section of the actual conditions as found in the United States surrounding schools for negroes, and the administration of those schools. The volume is intended to summarize the philosophy of education that dominates the education of the negro in the United States.

Volume II deals with more specific material. It undertakes to study all negro schools in the several states. It is quite evident that this is too great a task for a single volume. A volume might very well be devoted to each state, if a careful analysis of all schools were made. It is quite evident that a single visit to an institution is not adequate to form a correct judgment of the various factors employed in the administration of the school. The criticisms, in the main, appear to be fair, and the recommendations generally good, though far from complete or adequate. Being familiar with some of the colored schools in Virginia studied in this volume, it is quite evident to me that the brief survey of them in this volume, accompanied by recommendations, will not serve as the proper stimulus to their reorganization and betterment. On the whole, however, the work is admirable.

Northwestern University.

ELMER E. JONES.

STANDARD METHOD OF TESTING JUVENILE MENTALITY BY THE BINET-SIMON SCALE. By *Norbert J. Melville*. J. B. Lippincott Co., Philadelphia, 1917. Pp. XI + 140.

This is a convenient guide for those who are using the 1911 revision of the Binet-Simon tests. The first thirty pages of the text are devoted to a critical discussion of the theory and practice of mental testing. The author has grouped those tests in the 1911 series that have been found most useful in diagnosing mental deficiency; those that have proven next most valuable he has placed in a second group, and so on for six groups. Those tests that involve the use of the same materials and methods, also, are placed in a separate series, so that they can be conveniently given in sequence. There is a bibliography of four pages, samples of record sheets, etc. As the author says in the preface, no manual has yet dealt with the questions: "With what tests should the examiner begin? Which of two alternative questions should be first employed in a given case? Under what conditions may a test be repeated? By what precise standards shall we decide whether responses in such tests as the definitions should be credited to age six or age nine?"

Northwestern University.

ROBERT H. GAULT.

GENERAL INDEX TO VOLUME VIII

AUTHOR'S INDEX

	No. Page
Adler, Herman M.—A Psychiatric Contribution to the Study of Delinquency	1— 45
— — — Organization of Psychopathic Work in the Criminal Courts..	3—362
Anderson, V. V.—A Comparative Study of Feeble-Mindedness and Psychopathic Personality Among Offenders in Court.....	3—428
— — — The Immoral Woman as Seen in Court.....	6—902
Baldwin, William H.—The Most Effective Methods of Dealing with Cases of Desertion and Non-Support.....	4—564
Bates, Anne—Some Aspects of English Penal Institutions.....	3—375
Bowen, A. L.—The Joliet Prison and the Riots of June 5th.....	4—576
Briscoe, John P.—Reforms of the Criminal Law.....	5—653
Brown, A. W.—Military Orders as a Defense in Civil Courts.....	2—190
Bryant, Louise Stevens—The Women at the House of Correction in Holmesburg, Pa.	6—844
Chute, Charles L.—State Supervision of Probation Work.....	6—823
Claghorn, Kate Holliday (Chairman)—Crime and Immigration (Report of Committee "E" of the Institute).....	5—675
Cross, William T.—Statistics of Crime (Report of the American Prison Association)	1— 16
Deck, Jesse L.—Some Needed Reforms in Criminal Procedure.....	3—325
Doll, E. A.—On the Use of the Term "Feeble-Minded".....	2—216
Embree, William Dean—The New York "Public Defender".....	4—554
Eubank, Earle Edward—Loan Sharks and Loan Shark Legislation in Illinois	1— 69
Ferrari, Robert—French and American Criminal Law: Three Points of Resemblance	1— 33
— — Legal Aid for Poor Prisoners in France.....	5—733
Gordon, Alfred—Morbid Impulses for the Medico-Legal Standpoint (Art.)	6—829
— — The Relation of Legislative Acts to the Problem of Drug Addiction	2—211
Guibord, Alberta S. B.—Physical States of Criminal Women.....	1— 82
Hart, W. O.—Insanity as a Defense to Crime in Louisiana.....	5—658
Heacox, Frank L.—A Study of One Year's Parole Violators Returned to Auburn Prison.....	2—233
Heinrich, Edward Oscar—The Co-operation of a Library Staff With the Criminal Investigator	3—435
Hoffman, Charles W.—Courts of Domestic Relations.....	5—745
Kane, Francis Fisher (Chairman)—Drugs and Crime. (Report of Committee "G" of the Institute).....	4—502
Kuh, Sydney (and J. H. Murray)—A Psychiatric Clinic at the Chicago House of Correction.....	6—837
Kuhlmann, F.—A Further Extension and Revision of the Binet-Simon Scale	6—890

	No. Page
Lindsey, Edward (Chairman)—Indeterminate Sentence, Release on Parole and Pardon. (Report of the Committee of the Institute) ..	4—491
Lyon F. Emory—The Housing of Prisoners.....	5—739
McLean, Ridley—A Historical Sketch of Military Law.....	1—27
Millar, Robert W.—The Reform of Criminal Pleading in Illinois.....	3—337
Morgan, Charles Stillman—A Study in the Psychology of Testimony..	2—222
Murray, J. H. (and Sydney Kuh)—A Psychiatric Clinic at the Chicago House of Correction	6—837
Osborne, Thomas Mott—Common Sense in Prison Management.....	6—806
Parsons, Herbert C. (Chairman)—Probation and Suspended Sentence. (Report of Committee "B" of the Institute).....	5—694
Peyton, David Coombs—Some Essentials of Constructive Criminology..	6—911
Riddell, William Renwick—The First English Court in (the Present) Canada on Its Criminal Side.....	1—8
— — — A Trial for Witchcraft Six Hundred Years Ago.....	1—40
Rogers, Helen Worthington—A Digest of Laws Establishing Reformatories for Women in the United States.....	4—518
Shideler, Ernest H.—Family Disintegration and the Delinquent Boy in the United States	5—709
Stanley, L. L.—Morphinism and Crime.....	5—749
Strong, George V.—The Administration of Military Justice at the United States Disciplinary Barracks, Fort Leavenworth, Kansas.....	3—420
Wallace, George S.—The Need, the Propriety and Basis of Martial Law, with a Review of the Authorities.....	2—167
— — — The Need, the Propriety and Basis of Martial Law, with a Review of the Authorities (Concluded).....	3—405
White, William A. (Chairman)—Sterilization of Criminals (Report of Committee "F" of the Institute).....	4—499

SUBJECT INDEX.

Adult Department in San Francisco, from January 1st to June 30th, 1917, Semi-Annual Report of. (Note.).....	4—621
Alcoholism in Anglo-Saxon Countries, The Prevention and Repression of. (Note.)	1—103
Angeles, Smaller Number of Cases in Los. (Note.).....	1—138
Baker Foundation, The Judge. (Ed.).....	2—162
Binet-Simon Scale, A Further Extension and Revision of the. (Art.) By F. Kuhlman	6—890
Character Formation, Mechanism of: Introduction to Psychoanalysis. By William A. White. Rev. by Robert H. Gault.....	1—155
Charities and Correction, National Conference of. (Note.).....	1—141
— — — 1916, Proceedings of the Forty-third Annual Meeting of the National Conference of. Rev. by Ralph E. Heilman.....	1—153
Child Born Out of Wedlock in Pennsylvania, Support of. (Note.).....	5—771
— Labor Committee, Thirteenth Annual Report. (Note.).....	6—937
Children, A Humane Measure for the Protection and Care of Certain. (Note.)	1—117

	No. Page
— Born Out of Wedlock, and Abstract of Report to the Storching, The Norwegian Law Relating to. By Councillor of State Cast- berg. Rev. by Percy G. Kammerer.....	5—790
— in Industry and the Street Trades. (Note.).....	2—283
— Who Need Special Care? How May We Discover the. By Robert M. Yerkes. Rev. by Elizabeth Petty Shaw.....	2—315
Children's Court of New York City, Annual Report of the. (Review.)	5—793
— of the City of New York, Annual Report of the. (Review.)....	6—945
Citizenship Training, Compulsory. (Ed.).....	4—482
Commission. Illinois Plans for a State. (Note.).....	1—138
Committees of the Institute Appointed for 1917 to 1918. (Note.).....	6—935
Confessions Made to Peace Officers After Arrest be Reduced to Writing Before Admission in Evidence? Should Alleged. (Note.)....	1—111
Convict Labor for Road Work. By J. E. Pennybacker. Rev. by Ira B. Cross	2—316
— — The Manufacture of War Supplies for the Employment of. (Note.)	6—922
Courses in Criminology, Supplementary Announcement of. (Note.)...	2—292
Court and Juvenile Detention Home, Cook County, Illinois, Annual Re- port of the Juvenile. (Note.).....	4—618
— Attendant, New York Municipal Civil Service Examination for. (Note.)	3—454
— City and County of San Francisco, Report of Woman's. (Note.)	4—612
— in (the present) Canada on its Criminal Side, The First English. (Art.) By William Renwick Riddell.....	1— 8
— of Richmond, Va., First Annual Report of the Juvenile and Domes- tic Relations. (Note.).....	4—615
— of St. Louis, Mo., Report of the Juvenile. (Note.).....	4—619
— of the Parish of New Orleans, Juvenile. (Note.).....	4—618
— The Man in. By Frederick De Witt Wells. Rev. by F. Emory Lyon	2—312
— The Philadelphia Municipal. (Note.).....	1—138
— Report Traffic. (Note.).....	6—926
Courts and Public Health. (Note.).....	3—450
— Developing Standards in the Work of Domestic Relations. (Note.)	2—273
— of Domestic Relations. (Art.) By Charles W. Hoffman.....	5—745
Crime, Illiteracy and. (Note.).....	1—140
— Constructive Measures for Prevention. (Ed.) By Robert H. Gault	6—802
Criminal Courts, Organization of Psychopathic Work in the. (Art.) By Herman M. Adler.....	3—362
— Investigation, Laboratory Methods in. (Note.).....	1—109
— Law, A History of Continental. By Carl Ludwig von Bar. Rev. by Ernest W. Burgess	1—143
— — French and American: Three Points of Resemblance. (Art.) By Robert Ferrari.....	1— 33
— — Reforms of the. (Art.) By John P. Briscoe.....	5—653
— — Leniency in the Administration of the. (Note.).....	3—453
— Pleading in Illinois, The Reform of. (Art.) By Robert W. Millar	3—337
— Procedure, Some Needed Reforms in. (Art.) By Jesse L. Deck..	3—325

	No. Page
— — Suggested Improvements in. (Ed.).....	1— 2
— Sociology, By Enrico Ferri. Rev. by Arthur J. Todd.....	4—629
Criminals, Sterilization of. (Report of Committee "F" of the Institute).	
(Art.) By William A. White, Chairman.....	4—499
Criminologist in Illinois, State. (Ed.).....	1— 2
Criminology, Some Essentials of Constructive. (Art.) By David	
Coombs Peyton	6—911
— Supplementary Announcement of Sources in. (Note.).....	2—292
Dactyloplane, Ryan. (Note.).....	4—615
Defectives in New Castle County, Delaware, A Social Study of Men-	
tal. (Note.)	5—766
— Standardized Fields of Inquiry for Clinical Studies of Borderline.	
By Walter E. Fernald. Rev. by Elizabeth Petty Shaw.....	2—313
Defenders' Committee, The Voluntary. (Note.).....	2—278
Delinquency, Mental Aspects of. By Truman Lee Kelley. Rev. by Rob-	
ert H. Gault.....	4—637
— in War Time. (Ed.).....	5—642
Delinquent and Neglected Child, Reaching the Adult Responsible for the.	
(Note.)	5—782
— A Suggestion Concerning the Truant. (Note.).....	1—105
— Boy in the United States, Family Disintegration and the. (Art.)	
By Ernest H. Shideler.....	5—709
— Boys Released from Institutions, Study of. (Note.).....	2—269
— — Who Were Committed from the King County (Washington),	
Juvenile Court to the Boys' Parental School and the State Train-	
ing School During the Five-Year Period, 1911-1915, A Study of	
the After-Career of 408. (Note.).....	2—270
Desertion and Non-Support, The Most Effective Methods of Dealing with	
Cases of. (Art.) By William H. Baldwin.....	4—564
District Attorney, Annual Report of New York. (Note.).....	4—615
Domestic Relations Court of Richmond, Va., First Annual Report of the	
Juvenile and. (Note.).....	4—615
— — Court, Developing Standards in the Work of. (Note.).....	2—273
Dope Fiend Evil, Fixes Blame for. (Note.).....	1—107
Drug Addiction, The Relation of Legislative Acts to the Problem of.	
(Art.) By Alfred Gordon.....	2—211
Drugs and Crime (Report of Committee "G" of the Institute.) (Art.)	
By Francis Fisher Kane, Chairman.....	4—502
— Grand Jury Resolution Relating to Narcotic. (Note.).....	5—781
— in Massachusetts, Sale and Distribution of Narcotic. (Note.)....	5—777
— in Pennsylvania, Law Regulating the Use of. (Note.).....	5—772
— Re Narcotic. (Correspondence).....	5—757
Evidence? Should Alleged Confessions Made to Peace Officers After	
Arrest be Reduced to Writing Before Admission in. (Note.)	1—111
Family Desertion, A Study of. By Earle Edward Eubank. Rev. by	
Arthur J. Todd.....	1—150
— Disintegration and the Delinquent Boy in the United States. (Art.)	
By Ernest H. Shideler.....	5—709
Families of Prisoners in Pennsylvania, Support of Destitute. (Note.)..	5—771

	No. Page
"Feeble-Minded," On the Use of the Term. (Art.) By E. A. Doll....	2—216
— The Intelligence of the. By Alfred Binet. Rev. by W. C. Uhl...	2—304
Feeble-Mindedness and Psychopathic Personality Among Offenders in Court, A Comparative Study of. (Art.) By V. V. Anderson	3—428
— as Seen in Court. By V. V. Anderson. Rev. by Elizabeth Petty Shaw	3—478
— The Binet Scale and the Diagnosis of. By Lewis M. Terman. Rev. by Paul E. Bowers.....	2—307
Finger-Print Method for the American Police Systems, The. (Note.)..	2—288
Finger Printing, The Origin of. By Sir William J. Herschell. Rev. by Robert H. Gault	2—313
Finger Prints. (Note.).....	4—615
Howard Association for April, May, and June, 1917, Report of the Work of the Central. (Note.).....	4—613
Human Life, The Law of. By Elijah J. Brookshire. Rev. by Robert H. Gault	5—797
Identification Bureau, The Canadian Criminal: Annual Report, 1916. (Note.)	3—459
— in California, To Establish a State Bureau of. (Note.).....	2—275
Illiteracy and Crime. (Note.).....	1—140
Immigration, Crime and. (Report of Committee "E" of the Institute.) (Art.) By Kate Holliday Claghorn, Chairman.....	5—675
Immoral Woman as Seen in Court, The. (Art.) By V. V. Anderson..	6—902
Imprisonment before Trial is a Big Handicap. (Note.).....	4—627
Indeterminate Sentence, Release on Parole and Pardon. (Report of the Committee of the Institute.) (Art.) By Edward Lindsey, Chairman	4—491
— Law, Twenty Years' Experience Under the. (Note.).....	6—933
Inferiority and Its Psychical Compensation, Study of Organ. A Contribution to Clinical Medicine. By Alfred Adler. Rev. by Richard M. Elliott	2—305
Insanity as a Defense to Crime in Louisiana. (Art.) By W. O. Hart	5—658
— Syphilis, a Factor in Cause of. (Note.).....	3—448
Institute of Criminal Law and Criminology, Annual Meeting of the. (Ed.)	4—482
— — — — Program of the Ninth Annual Meeting of the American. (Ed.)	2—162
— — — — Program of the Ninth Annual Meeting of the American. (Ed.)	3—322
— — — — Committees of the, Appointed for 1917-1918. (Note.)	6—935
— — — — Sixth Annual Meeting of Illinois Branch of the. (Note.)	2—299
Intelligence in Children, The Development of. By Binet and Simon. Rev. by L. W. Webb.....	4—635
Joliet Prison and the Riots of June 5th, The. (Art.) By A. L. Bowen.	4—576
Judicial Decisions	1—96
— —	2—259
— — on Criminal Law and Procedure.....	3—917
— — — — —	4—586

	No. Page
— — — — —	5—760
— — — — —	6—918
Justice at the United States Disciplinary Barracks, Fort Leavenworth, Kansas, The Administration of Military. (Art.) By George V. Strong	3—420
— for the Poor, By the Committee on Criminal Courts of the Charity Organization Society of New York. Rev. by Roy William Foley	1—156
— Mercy and. (Note.)	4—627
Juvenile and Domestic Relations Court of Richmond, Va., First Annual Report of the. (Note.)	4—615
— Court and Juvenile Detention Home, Cook County, Illinois, Annual Report of the. (Note.)	4—618
— Delinquency in Italy. (Note.)	1—128
— — of St. Louis, Mo., Report of the. (Note.)	4—619
— — — the Parish of New Orleans. (Note.)	4—618
— — The War and. (Note.)	2—287
— Mentality by the Binet-Simon Scale, Standard Method of Testing. By Robert J. Melville (Rev.)	6—947
Kleptomania, Report of a Case of. (Note.)	1—110
Laboratory Methods in Criminal Investigation. (Note.)	1—109
Labor for Road Work, Convict. By J. E. Pennybacker. Rev. by Ira B. Cross	2—316
— in War Time, Wardens' Letters Re Utilization of Prison. (Note.)	3—455
Legal Aid for Poor Prisoners in France. (Art.) By Robert Ferrari.	5—733
Leniency in the Administration of the Criminal Law. (Note.)	3—453
Library Staff with the Criminal Investigator, The Co-operation of a. (Art.) By Edward Oscar Heinrich.	3—435
Loan Sharks and Loan Shark Legislation in Illinois. (Art.) By Earle Edward Eubank	1— 69
Martial Law, with a Review of the Authorities, The Need, The Propriety and Basis of. (Art.) By George S. Wallace.	2—167
— — with a Review of the Authorities, The Need, The Propriety and Basis of. (Art.) By George S. Wallace. (Concluded)	3—406
Medico-Legal Standpoint, Morbid Impulses from the. (Art.) By Alfred Gordon	6—829
Mental and Physical Development of Children, Effects of Hookworm Disease on the. By Edward K. Strong, Jr. Rev. by E. S. Jones.	2—306
— Hygiene, Annual Meeting of the National Committee for. (Note.)	1—139
— — Society, California. (Note.)	6—921
— Tests and Test Series, Some Criteria for the Evaluation of. By Florence Mateer, Rev. by Elizabeth Petty Shaw.	3—473
Military Justice at the United States Disciplinary Barracks, Fort Leavenworth, Kansas; the Administration of. (Art.) By George V. Strong	3—420
— Law, A Historical Sketch of. (Art.) By Ridley McLean.	1— 27
— Occupation of Hostile Territory in the Light of Criminal Law, The. (Note.)	1—115
— Offenders, Separation of Civil and; Jurisdiction of Civil and Military Courts; the Question of Practice. (Ed.)	5—642

	No. Page
— Orders as a Defense in Civil Courts. (Art.) By A. W. Brown...	2—190
Misconduct, Mental Conflicts and. By William Healy. Rev. by David Mitchell	3—471
Monograph No. 3. (Ed.).....	2—162
— No. 3. (Ed.).....	5—642
Morphinism and Crime. (Art.) By L. L. Stanley.....	5—749
Municipal Court, The Philadelphia. (Note.).....	1—138
Narcotic Addiction, Serious Problem for the Government. (Note.)....	
Neurotic Constitution, The. By Alfred Adler. (Review).....	6—943
Negro Education, A Study of the Private and High Schools for Colored People in the United States. By Thomas Jesse Jones. (Rev.)	6—947
Non-Support, The Most Effective Methods of Dealing with Cases of Desertion and. (Art.) By William H. Baldwin.....	4—564
Offender and His Relation to Law and Society, The. By Burdette G. Lewis. Rev. by F. Emory Lyon.....	2—310
Offenders, Separation of Civil and Military; Jurisdiction of Civil and Military Courts; the Question of Practice. (Ed.).....	5—642
Pardon, Indeterminate Sentence, Release on Parole and. (Report of the Committee of the Institute). (Art.) By Edward Lindsey, Chairman	4—491
Parole and Pardon, Indeterminate Sentence, Release on. (Report of the Committee of the Institute.) (Art.) By Edward Lindsey, Chairman	4—491
— Law, The Meaning of the. (Note.).....	1—129
— Violators Returned to Auburn Prison, A Study of One Year's. (Art.) By Frank L. Heacox.....	2—233
Patrolmen, New York Civil Service Examination for. (Note.).....	
Penal Code, Pennsylvania Commission on. (Note.).....	5—786
— Institutions, Some Aspects of English. (Art.) By Anne Bates... 3—375	
— Legislation Adopted by the General Assembly of Louisiana in 1916, Prison and. (Note.).....	3—451
Penitentiary, Forward Steps in the Missouri. (Note.).....	1—135
People vs. Jurek. (Corres.).....	3—441
Physical Development of Children, Effects of Hookworm Disease on the Mental and. By Edward K. Strong, Jr. Rev. By E. S. Jones..	2—306
— Examination of Prisoners on Admission to Prison, The. (Note.)	3—446
Pleading in Illinois, The Reform of Criminal. (Art.) By Robert W. Millar	3—337
Police Administration and Practice in Boston, Conferences on. (Note.)	1—130
— Department, Annual Report of the New York. (Note.).....	5—786
— — Annual Report of the St. Louis. (Note.).....	5—785
— Officers, Legal Training for. (Note.).....	5—785
— Report of Baltimore. (Note.).....	4—615
— Schools. (Note.)	3—463
— Systems, The Finger Printing Method for the American. (Note.)	2—288
— University Lectures for. (Note.).....	3—464
Prison Association, Annual Meeting of the American. (Ed.).....	5—642
— — The American. (Ed.).....	3—322
— Conditions, Irish. (Note.)	5—783

	No. Page
— Management, Common Sense in. (Art.) By Thomas Mott Osborne	6—806
— Reform, Compiled by Corrine Bacon. Rev. by Herbert H. Gault..	2—313
Prisoners in France, Legal Aid for Poor. (Art.) By Robert Ferrari..	5—733
— Massachusetts Society for Aiding Discharged. (Note.).....	3—459
Prisoners on Admission to Prison, The Physical Examination of. (Note.)	3—446
— The Housing of. (Art.) By F. Emory Lyon.....	5—739
Probation, Adult, Ten Years' Experience in Indiana. (Note.).....	6—927
— and Suspended Sentence. (Report of Committee "B" of the Institute.) (Art.) By Herbert C. Parsons, Chairman.....	5—675
Probation Association, Meeting of the National. (Note.).....	2—291
— Commission, New York State. (Note.).....	1—136
— Department of San Francisco, for the Month of August, 1917; Report of Adult. (Note.).....	4—622
— Officer, Examination for Chief in the Juvenile Court of Cook County, Ill. (Note.).....	6—928
— Officer, Court of Special Sessions (February 15, 1917), N. Y. Civil Service Examination for Promotion to Chief. (Note.).....	4—622
— — (July 17, 1917) Civil Service Examination for Promotion to Deputy Chief. (Note.).....	4—624
— Report of Massachusetts Commission on. (Note.).....	2—290
— Work, State Supervision of. (Art.) By Charles L. Chute.....	6—823
Probationary System in the United States Navy: General Order 110. (Note.)	3—464
Procedure, Some Needed Reforms in Criminal. (Art.) By Jesse L. Deck	3—325
— Suggested Improvements in Criminal. (Ed.).....	1— 2
Prostitution, Slavery of, A Plea for Emancipation. By Maude E. Miner. Rev. by Walter Clarke	1—152
Protection and Care of Certain Children, A Humane Measure for the. (Note.)	1—117
Psychiatric Clinic at the Chicago House of Correction, A. (Art.) By J. H. Murray & Sydney Kuh.....	6—837
Psychiatrial Society Re Clinical Psychologists, The New York. (Note.)	2—266
— Family Studies. By A. Myerson. Rev. by Herman M. Adler.....	3—476
Psychiatrial Society Re Clinical Psychologists, The New York. (Ed.)	2—162
Psychiatry, Studies in Forensic. By Bernard Glueck, M.D. Rev. by Adolph Meyer	1—156
Psychologists, American Association of Clinical. (Note.).....	6—921
Psychology of Special Abilities and Disabilities, The. By Augusta F. Bronner. Rev. by David Mitchell.....	3—474
Psychopathic Hospital Under the Management of the Board of Regents of the University of California, Regulating the Admission of Patients Thereto, Their Treatment Therein and Discharge Therefrom, and Making an Application Therefor; An Act Providing for the Establishment, Government and Maintenance of a. (Note.)	1—113
— Work in Criminal Courts, Organization of. (Art.) By Herman M. Adler	3—362

	No. Page
Public Affairs Information Service. By Lillian Henley & Katherine J. Middleton, Ed. Rev. Robert H. Gault.....	5-792
— Defender, The. (Note.).....	6-926
— Defender, The; A Necessary Factor in the Administration of Justice. By Mayer C. Goldman. Rev. by Robert H. Gault.....	2-316
— — The Need for a. (Note.).....	2-273
— — The New York. (Art.) By William Dean Embree.....	4-554
— Speaking, The Law of Illegal. (Note.).....	5-786
Reformatories for Women in the United States, A Digest of Laws Establishing. (Art.) By Helen Worthington Rogers.....	4-518
Relief of Persons Dependent Upon Soldiers and Sailors, National Chamber of Commerce Committee's Plan for. (Note.).....	4-625
Riot in Illinois, Prison. (Ed.).....	2-162
Riots of June 5th, The Joliet Prison and the. (Art.) By A. L. Bowen.....	4-576
Saloons Out of Politics, Boston. (Note.).....	1-141
Schuettler of the Chicago Police, Chief. (Note.).....	1-133
Signatures, Logical Analysis of Subscribed. (Note.).....	2-267
Social Diagnosis. By Mary E. Richmond. Rev. by Robert H. Gault....	4-636
Statistics, Fourth Tentative Draft of Act Reported by the Committee on Vital and Penal. (Note.).....	4-599
— of Crime (Report of the American Prison Association). (Art.) By William T. Cross.....	1- 16
— Vital. (Ed.)	4-482
Sterilization of Criminals (Report of Committee "F" of the Institute). (Art.) By William A. White, Chairman.....	4-499
— — Inmates of Institutions Having the Care and Custody of Idiotic, Imbecile, Feeble-Minded and Insane Persons, in Cases where such Sterilization Will Materially Improve the Mental or Physical Condition of such Persons, and in Cases where, Owing to the Idiocy, Imbecility, Insanity or Feeble-Mindedness of such Persons, Not Being in Permanent Custody; the Procreation by such Persons Would Produce Offspring Similarly Affected; To Provide for the. (Note.).....	1-126
Subnormality, Problems of. By J. E. W. Wallin. (Review).....	6-939
Support of Child Born Out of Wedlock in Pennsylvania. (Note.)....	5-771
Suspended Sentence, Probation and. (Report of Committee "B" of the Institute.) (Art.) By Herbert C. Parsons, Chairman.....	5-675
Testimony, A Study in the Psychology of. (Art.) By Charles Stillmen Morgan	2-222
— Intelligence Testing and. (Note.).....	4-594
Trades, Children in Industry and the Street. (Note.).....	2-283
Traffic Court Report. (Note.).....	6-926
Wardens' Letters Re Utilization of Prison Labor in War Time. (Note.)	3-455
Welfare Commission, Report of the Minnesota Child. By William W. Hodson et al. Rev. by J. L. Gillin.....	5-787
— Department in Illinois, Organization of the Public. (Note.)....	3-468
— in Illinois, Department of Public. (Ed.).....	3-322
— The Minnesota Legislature and Child. (Note.).....	2-282

	No. Page
— Work in Chicago, Human. By Harvey C. Carbaugh. Rev. by F. Emory Lyon	5—787
Westbrook, Wesley H., First Deputy Superintendent of Police of Chicago. (Note.)	1—134
Witchcraft Six Hundred Years Ago, A Trial for. (Art.) By William Renwick Riddell	1— 40
Woman's Court, City and County of San Francisco, Report of. (Note.)	4—612
Women, Act Establishing the Connecticut State Farm for. (Note.)..	4—595
— at the House of Correction in Holmesburg, Pa., The. (Art.) By Louise Stevens Bryant.....	6—844
— in the United States, A Digest of Laws Establishing Reformatories for. (Art.) By Helen Worthington Rogers.....	4—518
— Physical States of Criminal. (Art.) By Alberta S. B. Guibord..	1— 82

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CONTENTS

EDITORIALS.

Coming Annual Conferences.....	
Suggested Improvements in Criminal Procedure.....	
State Criminologist in Illinois.....	2

CONTRIBUTED ARTICLES AND COMMITTEE REPORT.

1. The First English Court in (the Present) Canada on Its Criminal Side	<i>William Renwick Riddell</i>	8
2. Statistics of Crime (Report of the American Prison Association)..	<i>William T. Cross</i>	16
3. A Historical Sketch of Military Law.....	<i>Ridley McLean</i>	27
4. French and American Criminal Law: Three Points of Resem- blance	<i>Robert Ferrari</i>	33
5. A Trial for Witchcraft Six Hundred Years Ago.....	<i>William Renwick Riddell</i>	40
6. A Psychiatric Contribution to the Study of Delinquency.....	<i>Herman M. Adler</i>	45
7. Loan Sharks and Loan Shark Legislation in Illinois.....	<i>Earle Edward Eubank</i>	69
8. Physical States of Criminal Women.....	<i>Alberta S. B. Guibord</i>	82

JUDICIAL DECISIONS (96)—NOTES AND ABSTRACTS (103)—
REVIEWS AND CRITICISMS (143).

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CONTENTS

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EDITORIAL.

Constructive Measures for Crime Prevention..... 802

CONTRIBUTED ARTICLES.

1. Common Sense in Prison Management....*Thomas Mott Osborne* 806
2. State Supervision of Probation Work.....*Charles L. Chute* 823
3. Morbid Impulses from the Medico-Legal Standpoint.....
.....*Alfred Gordon* 829
4. A Psychiatric Clinic at the Chicago House of Correction.....
.....*J. H. Murray and Sydney Kuh* 837
5. The Women at the House of Correction in Holmesburg, Pa.
.....*Louise Stevens Bryant* 844
6. A Further Extension and Revision of the Binet-Simon Scale....
.....*F. Kuhlmann* 890
7. The Immoral Woman As Seen in Court.....*V. V. Anderson* 902
8. Some Essentials of Constructive Criminology.....
.....*David Coombs Peyton* 911

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